TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. [illegible]

THE COMPAGNIE FRANCAISE DE NAVIGATION A VAPEUR, PLAINTIFF IN ERROR,

vs.

THE STATE BOARD OF HEALTH OF LOUISIANA, EDMOND SOUCHON, HAMPDEN S. LEWIS, AND CHARLES A. GAUDET.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

FILED MAY 8, 1899.

(17,896.)

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SUPREME COURT OF THE UNITED STATES.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., DECEMBER 1, 1899.

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a UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

COMPAGNIE FRANCAISE DE NAVIGATION A VAPEUR, Plaintiff in Error,
versus
STATE BOARD OF HEALTH, EDMOND SOUCHON, HAMPDEN S. Lewis, and Charles A. Gaudet, Defendants in Error. } No. 13076.

Howe, Spencer & Cocke, for plaintiff in error.
Francis C. Zacharie, for defendants in error.

Writ of error to the supreme court of the State of Louisiana from the Supreme Court of the United States of America, returnable at the city of Washington, District of Columbia, within thirty (30) days from the thirteenth (13th) day of April, A. D. 1899.

TRANSCRIPT OF RECORD.

1 *Original Petition.*

Civil District Court, Div. —.

COMPAGNIE FRANCAISE DE NAVIGATION A VAPEUR
vs.
STATE BOARD OF HEALTH ET ALS. } No. 57543.

To the honorable the judges of the civil district court for the parish of Orleans:

The Compagnie Francaise de Navigation a Vapeur brings this its suit against the State Board of Health of the State of Louisiana and against Edmond Souchon, Charles A. Gaudet, and Hampden S. Lewis, members of said State Board of Health; and thereupon your petitioner complains and says:

1. Your petitioner is a corporation created by and existing under the laws of the Republic of France and a citizen of said Republic, domiciled in the city of Marseilles, in the Republic of France, and of which Cyprien Fabre et Cie. are managers in Marseilles and James Sawers & Son in the city of New Orleans, and is the owner of a large number of steamships and is engaged in the business of transportation of freight and passengers for hire from various ports on the Mediterranean sea to various ports in the United States, and more particularly to the port of New Orleans; that your petitioner is more particularly the owner of the steamship Brittania, which is engaged in the transportation of freight and passengers between the ports of Palermo and Messina, Italy, and the port of New Orleans, in the State of Louisiana.

2. That the defendant The State Board of Health is a body created by act No. 192 of the General Assembly of Louisiana of the

year 1898, with power to sue and be sued, domiciled in this city and composed of seven members, whose duty it is by the provisions of said act to protect and preserve the public health by preparing and promulgating a sanitary code for the State of Louisiana, by providing for the general sanitation of the State, and with authority to regulate infectious and contagious diseases and to prescribe a maritime and land quarantine against places infected with such diseases.

3. That the other defendants to this suit, to wit, Edmond
2 Souchon, Hampden S. Lewis, and Charles A. Gaudet, are members of said board and are residents and citizens of this city and State.

4. That in the course of petitioner's said business of transporting freight and passengers from ports on the Mediterranean sea to ports in the United States, your petitioner caused its steamship Brittania, on or about the 2nd day of September, 1898, to be cleared from the ports of Palermo, Italy, and Marseilles, France, for the port of New Orleans with a cargo of about one hundred tons of general merchandise and with about four hundred and eight passengers, said freight being destined for the port of New Orleans, State of Louisiana, and some of said passengers were persons designing and intending to enter the United States through the port of New Orleans for the purpose of settling in the State of Louisiana and adjoining States, and some were citizens of the United States and residents of the State of Louisiana who were returning to their homes.

5. That said passengers were in all respects at said time and ever since have been free from infectious or contagious diseases of any kind and were so free from any such diseases at the time of the arrival of said steamship at the quarantine station established by the defendant The State Board of Health some distance below the city of New Orleans, on the Mississippi river, about 8.40 o'clock a. m., on the 29th day of September, 1898; that on the same day, in accordance with the regulations of said defendant, The State Board of Health, said vessel was regularly inspected and her freight and passengers examined by the officers of the said State Board of Health and it was found that her passengers and cargo were entirely free from any infectious or contagious disease or from any disease which was likely to affect the health of the people of New Orleans or the State of Louisiana, and accordingly she was given a clean bill of health.

6. That notwithstanding this fact and although under the rules and regulations of said defendant, The State Board of Health, said vessel should have been permitted to at once proceed to her destination at the port of New Orleans, and there to discharge her cargo and passengers, and notwithstanding that her said cargo and pas-
3 sengers continued free of all infectuous or contagious disease or any disease likely to affect the health of the people of said city or State, and although said vessel had complied with all the regulations of said board, said State Board of Health, on the 29th day of September, 1898, at a session convened at its office in the city of New Orleans, whereat the following members were

present, voting affirmatively, and assenting, to wit, Edmond Souchon, Charles A. Gaudet, and Hampden S. Lewis, passed a resolution prohibiting in effect the said vessel from coming into the port of New Orleans and there discharging its passengers, a certified copy of which resolution petitioner annexes hereto and makes same a part of this petition; that in pursuance of said resolution Dr. Edmond Souchon, president of said State Board of Health, served a notice on the agents of your petitioner, James Sawers & Son, prohibiting the landing of said steamship at the port of New Orleans and at the various other places mentioned therein for the purpose of discharging said passengers, and subsequently the president of said State Board of Health notified the agents of your petitioner that if they attempted to land said passengers at any place contiguous to the port of New Orleans not at the present quarantined that quarantine would at once be established at such place, and that said passengers would not be allowed to land there; that said prohibition virtually applied to all the territory within one hundred miles of the port of New Orleans, and in effect debarred said steamship from landing at any place in the State of Louisiana for the purpose of discharging said passengers, and your petitioner annexes hereto and makes part hereof the notice so received from said State Board of Health.

-. Petitioner avers that while said resolution on its face purports to be general in its character, that as a matter of fact same was passed for the specific purpose of prohibiting and preventing said steamship Brittania from landing in the State of Louisiana and discharging said passengers therein, inasmuch as for some time prior thereto, and even subsequent to the passage of said ordinance, said board of health has permitted large bodies of persons coming directly from the same ports in Italy and Sicily via the port of New York to be brought into the city of New Orleans by various railroad companies, and ever since the promulgation of said ordinance more than two hundred such persons, varying in groups of thirty to one
4 hundred in number, have from time to time been permitted to enter said city.

8. Petitioner avers that said State Board of Health pretends to base its right to thus exclude persons in good health and not affected with any infectuous or contagious disease from the port of New Orleans and neighboring territory upon the authority of said act No. 192 of 1898, and especially under the following portion of section 8 of said act, to wit:

"The State Board of Health, in its discretion, may prohibit the introduction into any infected portion of the State persons acclimated, unacclimated, or said to be immune, when in its judgment the introduction of such persons would add to or increase the prevalence of the disease."

9. Petitioner avers that said portion of said section 8 of said act No. 192 of 1898 does not confer upon the said State Board of Health the right to exclude healthy persons from coming from various foreign ports into the port of New Orleans, as pretended by them, and if said section does so confer upon said board said pretended right

and authority, same is in violation of the Constitution of the United States, inasmuch as it is an attempt on the part of the State of Louisiana to regulate or prohibit commerce from foreign countries into the United States, or to authorize the regulation or prohibition thereof by said board, and is especially in contravention of article 1, paragraph 8, section 3, thereof, which provided that Congress shall have exclusive power to regulate commerce with foreign nations and among the several States; and petitioner specially pleads and claims the benefit and protection of said provision of the Constitution.

10. Your petitioner avers that this *is* arbitrary and illegal action of said State Board of Health and the individual members thereof, by detaining said vessel at the quarantine station and preventing her from proceeding to the city of New Orleans and there discharging her passengers and cargo, has caused great damage, and is causing and will continue to cause your petitioner further damage to an amount of more than five hundred dollars, and for every day that said vessel is prohibited from discharging said passengers, for the reason that by law and by contract petitioner is compelled to furnish said passengers with lodging and with food, and besides is subjected to a heavy expense in the way of wages for its crew and officers, and various other and sundry expenses which it would not be compelled to suffer were it permitted to land said vessel and discharge its passengers and cargo, as it has a right to do; that said arbitrary and illegal action of said board and the members thereof will cause your petitioner to suffer heavy damages in the way of loss of business, for the reason that the agents of said steamship in the city of New Orleans have procured for and bound said ship to receive a large and complete cargo of freight destined for ports in Europe, for all of which damage the defendants are liable *in solido* to your petitioner; that by reason of said arbitrary and illegal action of said board and the members thereof your petitioner has already suffered damages from the cause aforesaid in the sum of twenty five hundred dollars, and it reserves its right to amend this petition hereafter and claim of said board and the members thereof *in solido* any further damage which it may suffer in the premises.

That unless said State Board of Health be restrained by this honorable court it will persist in its illegal and arbitrary refusal to permit said steamer to land said passengers in this city, to the great and irreparable injury of petitioner, and your petitioner avers that for the protection of its rights in the premises it is entitled to and desires a writ of injunction, directed against the said board of health, its officers and agents, prohibiting and enjoining them and each of them from interfering with or preventing the landing of said steamship at the port of New Orleans and from unloading and discharging its said cargo and passengers.

Wherefore, the premises and the annexed affidavit being considered, petitioner prays that said State Board of Health, through Edmond Souchon, its president, and said Edmond Souchon, Hampden S. Lewis, and Charles A. Gaudet, be cited to answer

hereto; that upon petitioner furnishing bond with good and sufficient surety in an amount to be fixed by the court that a writ of injunction issue herein, directed to said board of health, enjoining and prohibiting it and its officers, agents, and employees, and each of them, from enforcing said resolution or ordinance of said board of date 29th September, 1898, or from prohibiting or interfering in any manner your petitioner from bringing its said steamship Brit-
tania to the port of New Orleans and there discharging its
6 passengers and cargo; that after due proceedings had that there be judgment in favor of your petitioner and against said State Board of Health and Edmond Souchon, Hampden S. Lewis, and Charles A. Gaudet *in solido* in the full sum of twenty-five hundred dollars damages, with legal interest from judicial demand, and reserving unto petitioner the right to claim from said defendants any further damages which it may hereafter be caused by their said illegal acts; that said portion of section 8 of said act No. 192 of 1898 hereinabove set forth be declared null and void, as being in contravention of the Constitution of the United States, and that said writ of injunction be made perpetual; and petitioner prays for costs and for all general and equitable relief.

(Signed) HOWE, SPENCER & COCKE,
Att'ys for Plaintiff.

Copy.

EXHIBIT A.

LOUISIANA STATE BOARD OF HEALTH,
September 29th, 1898.

Messrs. Jas. Sawers & Son, agents S. S. "Brittania," New Orleans, La.

GENTLEMEN: Referring to the detention of the S. S. Brittania at the Miss. River quarantine station, with 408 Italian immigrants on board, I have to inform you that under the provisions of the new State Board of Health law, section 8, of which I enclose a marked copy, this board has adopted a resolution forbidding the landing of any body of people in any town, city, or parish in quarantine. Under this resolution the immigrants now on board the "Brittannia" cannot be landed in any of the following parishes of Louisiana, namely: Orleans, St. Bernard, Jefferson (right bank), St. Tammany, Plaquemines, St. Charles, or St. John. You will therefore govern yourselves accordingly.

Respectfully,
(Signed) EDMOND SOUCHON, M. D.,
President Louisiana State Board of Health.

7 A true copy.
G. FARRAR PATTON, M. D., *Sec'ty.*

Copy.

EXHIBIT B.

SEPTEMBER 29TH, 1898.

Resolution adopted in special session by the Louisiana State Board of Health, September 29th, 1898:

"Resolved, That hereafter in the case of any town, city or parish of Louisiana being declared in quarantine, no body or bodies of people, immigrants, soldiers, or others shall be allowed to enter said town, city or parish so long as said quarantine shall exist, and that the president of the board shall enforce this resolution."

A true copy.

(Signed) G. FARRAR PATTON, M. D., *Sec'y.*

Supplemental and Amended Petition.

Civil District Court, Parish of Orleans, Div. C.

COMPAGNIE FRANCAISE DE NAVIGATION A VAPEUR
vs.
STATE BOARD OF HEALTH ET ALS. } No. 57543.

To the honorable the judges of the civil district court for the parish of Orleans:

The supplemental and amended petition of the Compagnie Francaise de Navigation a Vapeur, plaintiff in the above entitled and numbered cause, with respect shows:

1. Your petitioner reiterates all and singular the allegations of its original petition, except in so far as same may be herein modified.

2. That since the filing of its original petition your petitioner has suffered additional damages, as hereinafter set forth, in a sum exceeding eight thousand five hundred dollars ($8,500), for which, for the reasons set forth in its original and this its supplemental petition, said defendants are liable *in solido* unto your petitioner; that said damage was occasioned by reason of the illegal, unjust, and arbitrary action aforesaid of said State Board of Health and said individual members thereof in the exclusion from the city and port of New Orleans of said vessel and passengers, some of whom, as heretofore alleged, were citizens of the United States returning to their homes, and some of whom were subjects of the King of Italy entitled to the protection of the treaties between said sovereign and the United States and who intended to avail themselves of the laws of the United States regulating immigration by entering the State of Louisiana to establish residence in said State or adjoining States; that said immigrants and other passengers were so excluded and prevented from landing, notwithstanding the fact that said steamer Britania had complied with all the laws of the United States regulating commerce with foreign

8

nations, quarantine, and immigration into the United States, and notwithstanding that said immigrants were coming from ports which were not infected with any contagious or infectious disease and were not themselves infected with any such disease, but were at the time of their departure and at all times thereafter free from any infectious or contagious diseases or diseases that were likely to affect the public health of the citizens of New Orleans or State of Louisiana, and were under the immigration laws entitled to enter; that your petitioners had no notice of the intended action of the defendant in so prohibiting the landing of said passengers and immigrants until the arrival of their steamer Britania at the port of New Orleans, said steamer having sailed prior to the declaration by said board of the existence of an infectious disease in the city of New Orleans.

3. That by reason of the illegal and arbitrary conduct of
9 the defendants your petitioner was compelled for many days to keep said vessel moored in the river below the city of New Orleans, with all of its said passengers, crew, and cargo aboard; and as said defendants persisted in their said illegal and arbitrary refusal to permit the landing of said immigrants and passengers, in order to minimize as much as possible its damages, your petitioner was compelled to send its said steamer to the port of Pensacola, Florida, which was the nearest available port to the port of New Orleans, and there disembark said immigrants and passengers and thereafter to cause its said steamer to return to the port of New Orleans to discharge its cargo; that said voyage to and from Pensacola from and to New Orleans, so occasioned, caused a loss of time to said vessel, even with the utmost dispatch, of more than three weeks; that during the illegal detention of said vessel in the Mississippi river and during the voyage to Pensacola, and while in said port, your petitioner was at great expense in the maintenance and care of said immigrants, passengers, and crew of said vessel. Moreover, your petitioner suffered great damages, as will be shown on the trial of this case, in the way of extra wages of officers and crew, extra fuel and supplies consumed on said voyage between New Orleans and Pensacola, as well as during the said illegal detention, extra compensation to its agents in this city and at Pensacola, cablegrams, and sundry other expenses. Furthermore, your petitioner has suffered large damages by reason of the fact that said vessel thus lost more than twenty-one days on the voyage from her home port and return, which delay occasioned petitioner a large loss, both of business and profits, and the damages thus occasioned to your petitioner by said illegal and arbitrary action of said defendant exceeds in the aggregate the sum of eleven thousand dollars, and said expenses and damages were caused solely by said illegal and arbitrary action of said board and not otherwise.

4. That said action of said defendants in prohibiting the entrance and landing of said passengers and immigrants in the port of New Orleans and the State of Louisiana was, moreover, in violation of the laws of the United States and the rules and regulations made in pursuance thereof relating to quarantine at and immigration

from foreign countries into ports of the United States, and
10 especially acts of Congress approved February 15, 1893, and the rules and regulations made in pursuance thereof, and acts of Congress of March 3, 1893, August 3, 1882, and June 26, 1884, and the rules and regulations made in pursuance thereof, and of the treaties now existing between the United States, on the one part, and the Kingdom of Italy and the Republic of France, on the other part, and petitioner specially pleads and claims the benefit of said acts and treaties.

Wherefore, the premises considered, petitioner prays leave that this its supplemental and amended petition may be filed; that said defendants may be cited to answer hereto; that after due proceeding had there be judgment in favor of your petitioner and against the said defendants, as in its original petition prayed for; and, further, that there be judgment in favor of your petitioner and against the said defendants *in solido* in the full sum of eleven thousand dollars, with legal interest from judicial demand; and petitioner prays for costs and for general relief.

(Signed) HOWE, SPENCER & COCKE,
Att'ys for Plaintiff.

Service accepted and citation waived.
(Signed) F. C. ZACHARIE,
Att'y for Defendants.

Exception of No Cause of Action.

Civil District Court, Div. C.

COMPAGNIE FRANCAISE DE NAVIGATION A VAPEUR
vs.
STATE BOARD OF HEALTH ET ALS. } No. 57543.

And now come the defendants, through undersigned counsel, and without pleading at this time to the merits for peremptory exception to the plaintiff's original and supplemental petition say that said original and supplemental petitions and the documents thereunto annexed disclose no cause of action against these defendants or either of them.

Wherefore, the premises considered, defendants pray that this exception be maintained, and that plaintiff's demand be rejected at its cost; and defendants pray for general relief.

(Signed) F. C. ZACHARIE,
Att'y for Def'ts.

11 *Judgment.*

Civil Dist. Court, Parish of Orleans, Div. "C."

COMPA-NIE FRANCAISE DE NAVIGATION A VAPEUR
vs.
STATE BOARD OF HEALTH. } No. 57543.

For the reasons assigned in the written opinion of the court on this day delivered and filed, the law being in favor of defendants and against plaintiff—

It is ordered, adjudged, and decreed that defendant's exception of "no cause of action" be maintained and the suit of the plaintiff company is dismissed at its cost.

Judgment rendered January 26th, 1899.

Judgment signed January 27th, 1899.

(Signed) F. A. MONROE, *Judge.*

Motion for a Suspensive Appeal.

Civil District Court, Division C.

COMPAGNIE FRANCAISE DE NAVIGATION A VAPEUR
vs.
STATE BOARD OF HEALTH ET ALS. } No. 57543.

On motion of Howe, Spencer & Cocke, attorneys for the plaintiff in the above entitled and numbered cause, and on suggesting to the court that there is manifest error to the plaintiff's prejudice in the judgment rendered on the twenty-sixth day of January, 1899, and signed on the 27th day of January, 1899, maintaining the defendants' exception of no cause of action and dismissing the plaintiff's suit, and on further suggesting to the court that plaintiff desires to take a suspensive appeal therefrom to the supreme court of Louisiana—

It is ordered that the plaintiff be, and is hereby, granted a suspensive appeal from said judgment to the supreme court of Louisiana, returnable on or before the next return day, to wit, the 1st Monday of February, 1899, on plaintiff's furnishing good and solvent bond, conditioned according to law, for the sum of —($150.00) dollars.

Filed Jan'y 27, 1899.

And entered on minutes of same day.

(Signed) JOE GARIDEL, *D'y Clerk.*

12 *Appeal Bond.*

Know all men by these presents that we, Compagnie Francaise de Navigation a Vapeur, as principal, and James Sawers & Sons, as sureties, are held and firmly bound unto Paul O. Guerin, clerk of the civil district court for the parish of Orleans, his successors, ex-

ecutors, administrators, and assigns, in the sum of one hundred and fifty dollars; for the payment whereof we bond ourselves, our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated in the city of New Orleans on this 27th day of January, in the year of our Lord one thousand eight hundred and ninety-nine.

Whereas the above-bounden Compagnie Francaise de Navigation a Vapeur has this day filed its motion of appeal from a final judgment rendered against it in the suit of Compagnie Francaise de Navigation a Vapeur *vs.* State Board of Health *et als.*, No. 57543 of the civil district court for the parish of Orleans, on the 26th day of January, 1899, and signed on the 27th day of January, 1899:

Now, the condition of the above obligation is such that the above-bounden Compagnie Francaise de Navigation a Vapeur shall prosecute its appeal and shall satisfy whatever judgment may be rendered against it or that the same shall be satisfied by the proceeds of its estate, real or personal, if it be cast in the appeal; otherwise that the said James Sawers & Sons shall be liable in its place.

(Signed) COMPAGNIE FRANCAISE DE NAVIGATION A VAPEUR,
By HOWE, SPENCER & COCKE, *Att'ys.*
JAMES SAWERS & SONS.

Supreme Court of Louisiana.

Transcript of appeal filed January 31st, 1899.

Assignment of Errors.

COMPAGNIE FRANCAISE DE NAVIGATION A VAPEUR *vs.* STATE BOARD OF HEALTH ET ALS.	No. 13076. Supreme Court of Louisiana.

Now comes plaintiff, appellant herein, and assigns for error in the opinion, judgment, and decree of the lower court as follows:

First. The court erred in sustaining the peremptory ex-
13 ception of the defendants.

Second. The court erred in dismissing the plaintiff's suit.

Third. The court erred in holding that section 8 of act 192 of 1898, or any portion thereof, conferred or purported to confer upon the State Board of Health the authority to exclude or interfere with legitimate foreign commerce.

Fourth. Even if said section 8 of said act 192 of 1898 did attempt to confer upon the State Board of Health authority to exclude or interfere with legitimate foreign commerce in the manner admitted by said exception, the court erred in holding that said section 8 of said act 192 of 1898, as construed and applied by the defendants, was not repugnant to the 8th section of the first article of the Constitution of the United States.

Fifth. Even if said section 8 of act 192 of 1898 did intend to confer

upon the State Board of Health the right and authority to exclude or interfere with the subjects and citizens of foreign governments seeking to enter the State of Louisiana in the manner conceded by the exception, the court erred in holding that said section 8 of said act 192 of 1898, as construed and applied by the defendants, was not in conflict with the treaties between the United States, on the one part, and the Republic of France and the Kingdom of Italy, on the other part, guaranteeing certain rights and privileges and immunities to the subjects and citizens of said foreign countries.

Sixth. The court erred in sustaining the peremptory exception of defendants and in dismissing the suit of the plaintiff in this, that section 8 of act 192 of 1898, relied upon by the defendants and as construed and applied by the court, contravenes the 14th article of the amendment of the Constitution of the United States, section 1, by depriving the plaintiff of its liberty and property without due process of law, and by denying to it the equal protection of the law.

14 Seventh. That the court erred in holding that said section 8 of said act 192 of 1898, relied upon by the defendants and as construed and applied by the court, did not contravene acts of Congress approved August 3, 1882, June 26, 1884, February 26, 1885, March 3, 1891, February 23rd, 1887, and March 3, 1875, regulating foreign immigration into the United States.

And for these and other errors apparent on the face of the record plaintiff prays that the judgment of the civil district court, division C, be reversed and this cause remanded to that court, with instructions to proceed with the trial thereof on the merits.

(Signed) HOWE, SPENCER & COCKE,
Attorneys for Plaintiff, Appellant.

(Endorsed:) No. 13076. Supreme court of Louisiana. Compagnie Francaise, etc., *vs.* State Board of Health *et al.* Assignment of errors. Filed Febr'y 9th, 1899. (Signed) Paul E. Mortimer, deputy clerk.

Judgment of the Court.

(Extract from the Minutes.)

NEW ORLEANS, THURSDAY, *March* 23*rd*, 1899.

The court was duly opened pursuant to adjournment.

Present: Their honors Francis T. Nicholls, chief justice; Lynn B. Watkins, Joseph A. Breaux, Newton C. Blanchard, associate justices.

His honor the chief justice pronounced the opinion and judgment of the court in the following case:

COMPAGNIE FRANCAISE DE NAVIGATION A VAPEUR
vs.
STATE BOARD OF HEALTH ET ALS. } No. 13076.

On appeal from the civil district court for the parish of Orleans.

For the reasons assigned, it is ordered and decreed that the judgment appealed from be, and the same is hereby, affirmed.

Opinion of the Court.

UNITED STATES OF AMERICA,
State of Louisiana.

Supreme Court of the State of Louisiana.

NEW ORLEANS, THURSDAY, *March 23rd*, 1899.

The court was duly opened pursuant to adjournment.

Present: Their honors Francis T. Nicholls, chief justice; Lynn B. Watkins, Joseph A. Breaux, Newton C. Blanchard, associate justices.

His honor the chief justice pronounced the opinion and judgment of the court in the following case:

15 COMPAGNIE FRANCAISE DE NAVIGATION A Vapeur
vs.
STATE BOARD OF HEALTH ET ALS. } No. 13076.

Appeal from the civil district court for the parish of Orleans.

This case is before us on an appeal by the plaintiffs from a judgment of the civil district court sustaining an exception of no cause of action filed by the defendants and dismissing their suit.

Plaintiffs' demand is set out in two petitions.

In the first of these petitions they alleged that they were a corporation created by and existing under the laws of the Republic of France and the owner of a large number of steamships, and were engaged in the business of transportation of freight and passengers for hire from various ports on the Mediterranean sea to various ports in the United States, and more particularly to the port of New Orleans; that petitioners were more particularly the owners of the steamship "Britannia," which was engaged in the transportation of freight and passengers between the ports of Palermo and Messina, Italy, and the port of New Orleans, in the State of Louisiana.

That the defendant The State Board of Health was a body created by act No. 192 of the General Assembly of the State of Louisiana of the year 1898, with power to sue and be sued, domiciled in this city, and composed of seven members, whose duty it was, by the provisions of said act, to protect and preserve the public health by preparing and promulgating a sanitary code for the State of Louisiana, by providing for the general sanitation of the State, and with authority to regulate infectuous and contagious diseases and to prescribe a maritime and land quarantine against places infected with such diseases.

That the other defendants to their suit, to wit, Edmond
16 Souchon, Hampden S. Lewis, and Charles A. Gaudet, were members of said board and residents and citizens of the parish of Orleans.

That in the course of petitioners' said business of transporting freight and passengers from ports on the Mediterranean sea to ports in the United States petitioners caused their steamship Brittania, on or about the second day of September, 1898, to be cleared from the ports of Palermo, Italy, and Marseilles, France, for the port of New Orleans with a cargo of about one hundred tons of general merchandize and with about four hundred and eight passengers, said freight being destined for the port of New Orleans, State of Louisiana, and some of said passengers were persons designing and intending to enter the United States through the port of New Orleans for the purpose of settling in the State of Louisiana and adjoining States, and some were citizens of the United States and residents of the State of Louisiana who were returning to their homes.

That said passengers were in all respects at said time and ever since free from infectuous or contagious diseases of any kind and were so free from any such diseases at the time of the arrival of said steamship at the quarantine station established by the defendant The State Board of Health some distance below the city of New Orleans, on the Mississippi river, about eight o'clock a. m., on the twenty-ninth (29th) day of September, 1898; that on the same day, in accordance with the regulations of said defendant, The State Board of Health, said vessel was regularly inspected and her freight and passengers examined by the officers of the said board of health, and it was found that her passengers and cargo were entirely free from any infectious or contagious disease or from any disease which was likely to affect the health of the people of New Orleans or the State of Louisiana, and accordingly she was given a clean bill of health.

That notwithstanding this fact, and although under the rules and regulations of said defendant, The State Board of Health, said vessel should have been permitted to at once proceed to her destination at the port of New Orleans, and there to discharge her cargo and passengers, and notwithstanding that her said cargo and passengers continued free of all infectious or contagious disease or any disease likely to affect the health of the people of said city or State,
17 and although said vessel had complied with all the regulations of said board, said State Board of Health on the twenty-ninth (29th) day of September, 1898, at a session convened at its office in the city of New Orleans, whereat the following members were present, voting affirmatively, and assenting to it, Edmond Souchon, Charles A. Gaudat, and Hampden S. Lewis, passed a resolution prohibiting, in effect, the said vessel from coming into the port of New Orleans and there discharging its passengers, certified copy of which resolution they annexed and made part of their petition; that in pursuance of this resolution Dr. Edmond Souchon, president of the State Board of Health, served a notice on the agents of petitioner (James Sawers & Son) prohibiting the landing of said steamship at the port of New Orleans and at the various other places mentioned therein for the purpose of discharging said passengers, and subsequently the president of said State Board of Health

notified the agents of petitioner that if they attempted to land said passengers at any place contiguous to the port of New Orleans not at that time quarantined that quarantine would at once be established at such place, and that said passengers would not be allowed to land there; that said prohibition virtually applied to all the territory within one hundred miles of the port of New Orleans, and in effect debarred said steamship from landing at any place in the State of Louisiana for the purpose of discharging said passengers, and petitioner annexed and made a part of their petition the notice so received from said State Board of Health.

They averred that while said resolution on its face purported to be general in its character that as a matter of fact same was passed for the specific purpose of prohibiting and preventing said steamship Britania from landing in the State of Louisiana and discharging said passengers therein, inasmuch as for some time prior thereto and even subsequent to the passage of said ordinance said board of health had permitted large bodies of persons coming directly from the same ports in Italy and Sicily via the port of New York to be brought into the city of New Orleans by various railroad companies, and ever since the promulgation of said ordinance more than two hundred such persons, varying in groups of thirty to one hundred in number, had from time to time been permitted to enter said city.

18 That said State Board of Health pretended to base its right to thus exclude persons in good health and not affected with any contagious or infectious disease from the port of New Orleans and neighboring territory upon the authority of said act No. 192 of 1898, and especially under the following portion of section eight (8) of said act, to wit:

"The State Board of Health, in its discretion, may prohibit the introduction into any infected portion of the State persons acclimated, unacclimated or said to be immune, when in its judgment the introduction of such persons would add to or increase the prevalence of the disease."

That said portion of said section eight (8) of said act No. 192 of 1898 did not confer upon the State Board of Health the right to exclude healthy persons from coming from various foreign ports into the port of New Orleans, as pretended by them, and if said section did so confer upon said board said pretended right and authority, same was in violation of the Constitution of the United States, inasmuch as it was an attempt on the part of the State of Louisiana to regulate or prohibit commerce from foreign countries into the United States, or to authorize the regulation or prohibition thereof by said board, and was especially in contravention of article 1, paragraph eight (8), section three (3), thereof, which provided that Congress shall have exclusive power to regulate commerce with foreign nations and among the several States, and petitioners specially pleaded and claimed the benefit and protection of said provision of the Constitution.

Petitioner averred that this arbitrary and illegal action of the State Board of Health and the individual members thereof by de-

taining said vessel at the quarantine station and preventing her from proceeding to the city of New Orleans and there discharging her passengers and cargo had caused great damage and was causing and would continue to cause petitioners further damage to an amount of more than five hundred dollars, and for every day that said vessel was prohibited from discharging said passengers, for the reason that by law and by contract petitioners were compelled to furnish said passengers with lodging and with food, and besides were subjected to a heavy expense in the way of wages for its crew and officers, and various other and sundry expenses which they would not be compelled to suffer were they permitted to land said vessel and discharge its passengers and cargo as they had a right to do.

19 That said arbitrary and illegal action of said board and the members thereof would cause petitioners to suffer heavy damages in the way of loss of business, for the reason that the agents of said steamship in the city of New Orleans had procured for and bound said ship to receive a large and complete cargo of freight destined for ports in Europe, for all of which damage the defendants were liable *in solido* to petitioners; that by reason of said arbitrary and illegal action of said board and the members thereof petitioners had already suffered damages from the cause aforesaid in the sum of twenty-five hundred dollars, and they reserved their right to amend their petition and claim of said board and the members thereof *in solido* any further damage which they might suffer in the premises.

That unless said State Board of Health be restrained by the court it would persist in its illegal and arbitrary refusal to permit said steamer to land said passengers in the city of New Orleans, to the great and irreparable injury of petitioners, and petitioners averred that for the protection of their rights in the premises they were entitled to and desired a writ of injunction directed against the said board of health, its officers and agents, prohibiting and enjoining them and each of them from interfering with or preventing the landing of said steamship at the port of New Orleans and from unloading and discharging its passengers.

In view of the premises, petitioners prayed that said State Board of Health, its president, and said Edmond Souchon, Hampden S. Lewis, and Charles A. Gaudet be cited; that a writ of injunction issue, directed to said board of health, enjoining and prohibiting it and its officers, agents, and employees, and each of them, from enforcing said resolution or ordinance of said board of date twenty-ninth (29th) September, 1898, or from prohibiting or interfering in any manner with petitioners bringing their said steamship Britania to the port of New Orleans and there discharging its passengers and cargo; that there be judgment in favor of petitioners and against said State Board of Health and Edmond Souchon, Hampden S. Lewis, and Charles A. Gaudet *in solido* in the full sum of twenty-five hundred dollars' damages, with legal interest from judicial demand, and reserving unto petitioners the right to claim from said defendants any further damages which they might thereafter

20 be caused by their said illegal acts; that said portion of section 8 of said act No. 192 of 1898 set forth be declared

null and void as being in contravention of the Constitution of the United States, and that said writ of injunction be made perpetual.

In the second of these petitions they alleged that since the filing of the original petition they had suffered additional damages, as thereinafter set forth, in a sum exceeding eight thousand five hundred dollars, for which, for the reasons set forth in their original petition and in said second petition, the defendants were liable to them in *solido*; that said damage was occasioned by reason of the illegal, unjust, and arbitrary action aforesaid of said State Board of Health and said individual members thereof in the exclusion from the city and port of New Orleans of said vessel and passengers, some of whom were subjects of the King of Italy, entitled to the protection of the treaties between said sovereign and the United States, and who intended to avail themselves of the laws of the United States regulating immigration by entering the State of Louisiana to establish residence in said State or adjoining States; that said im-igrants and other passengers were so excluded and prevented from landing, notwithstanding the fact that said steamer Britania had complied with all the laws of the United States regulating commerce with foreign nations, quarantine, and immigration into the United States, and notwithstanding that said immigrants were coming from ports which were not infected with any contagious or infectious disease, and were not themselves infected with any such disease, but were, at the time of their departure and at all times thereafter, free from any infectious or contagious diseases or diseases that were likely to affect the public health of the citizens of New Orleans or State of Louisiana, and were under the immigration laws entitled to enter; that petitioners had no notice of the intended action of the defendant- in so prohibiting the landing of said passengers and immigrants until the arrival of their steamer Britania at the port of New Orleans, said steamer having sailed prior to the declaration by said board of the existence of an infectious disease in the city of New Orleans.

That by reason of the illegal and arbitrary conduct of the defendants, petitioners were compelled for many days to keep
21 said vessel moored in the river below the city of New Orleans, with all of its said passengers, crew, and cargo aboard; that, as said defendants persisted in their said illegal and arbitrary refusal to permit the landing of said immigrants and passengers in order to minimize as much as possible its damages, petitioners were compelled to send their said steamer to the port of Pensacola, Florida, which was the nearest available port to the port of New Orleans, and there disembark said immigrants and passengers, and thereafter to cause their said steamer to return to the port of New Orleans, to discharge its cargo; that said voyage to and from Pensacola from and to New Orleans, so occasioned, caused a loss of time to said vessel, even with the utmost dispatch, of more than three weeks; that during the illegal detention of said vessel in the Mississippi river and during the voyage to Pensacola and while in said port petitioners were at great expense in the maintenance and care of said immigrants, passengers, and crew of said vessel. More-

over, petitioners suffered great damages, as would be shown on the trial of the case, in the way of extra wages of officers and crew, extra fuel and supplies consumed on said voyage between New Orleans and Pensacola, as well as during the said illegal detention, extra compensation to its agents in this city of New Orleans and at Pensacola, cablegrams, and other expenses. Furthermore, petitioners had suffered large damages by reason of the fact that said vessel thus lost more than twenty-one days on the voyage from her home port and return, which delay occasioned petitioners a large loss, both of business and profits, and the damages thus occasioned to petitioners by said illegal and arbitrary action of said defendant exceeded in the aggregate the sum of eleven thousand dollars, and said damages were caused solely by said illegal and arbitrary action of said board and not otherwise; that said action of said defendants in prohibiting the entrance and landing of said passengers and immigrants in the port of New Orleans and the State of Louisiana was moreover in violation of the laws of the United States and the rules and regulations made in pursuance thereof relating to quarantine at and immigration from foreign countries into ports of the United States, and especially acts of Congress approved February 15th, 1893, and the rules and regulations made in pursuance thereof, and acts of Congress of March 3rd, 1882, and June 26th, 1884, and
22 the rules and regulations made in pursuance thereof, and of the treaties existing between the United States, on the one part, and the Kingdom of Italy and the Republic of France, on the other part, and petitioners specially pleaded and claimed the benefit of said acts and treaties.

The premises considered, petitioners prayed that defendants be cited; that there be judgment in favor of petitioners and against the said defendants, as in their original petition prayed for; and further, that there be judgment in favor of petitioners and against the defendants *in solido* in the full sum of eleven thousand dollars, with legal interest from judicial demand.

Annexed by plaintiffs to their petition was a copy of the resolution of the board of health and of the notice served upon plaintiffs which they had referred to in their pleadings. The notice reads as follows:

"Louisiana State Board of Health.

"SEPTEMBER 29TH, 1898.

"Messrs. Jas. Sawers & Son, agent S. S. Britania, New Orleans, La.

"GENTLEMEN: Referring to the detention of the S. S. Britania at the Miss. River quarantine station with 400 Italian immigrants on board, I have to inform you that under the provisions of the new State Board of Health law, section 8, of which I enclose a marked copy, this board has adopted a resolution forbidding the landing of any body of people in any town, city, or parish in quarantine. Under this resolution the immigrants now on board the Britania cannot be landed in any of the following parishes of Louisiana, namely, Orleans, St. Bernard, Jefferson (right bank), St. Tammany,

Plaquemines, St. Charles, or St. John. You will therefore govern yourself accordingly.

"Respectfully,

"(Signed) EDMOND SOUCHON, M. D.,

"*President Louisiana State Board of Health.*"

The resolution read as follows:

"Resolved, That hereafter in the case of any town, city or parish of Louisiana being declared in quarantine, no body or bodies of people, immigrants, soldiers, or others, shall be allowed to
23 enter said town, city, or parish so long as said quarantine shall exist, and that the president of the board shall enforce this resolution."

Opinion.

At the time of the adoption of the constitution of 1898 there existed in the State of Louisiana a State Board of Health, with powers and duties defined and fixed by law.

Article 296 of that constitution directed that the General Assembly should create for the State, and for each parish and municipality therein, boards of health, and should define their duties and prescribe the powers thereof.

On the 14th of July, 1898, the governor of the State approved act No. 192, enacted by the General Assembly at the session of 1898. The act was entitled "An act to carry into effect article 296 of the constitution of the State of Louisiana in relation to boards of health; to protect and preserve the public health; to provide for the establishment and organization of a State Board of Health and parish and municipal boards of health; to define the powers, duty and authority of said boards; to provide for the appointment and election of officers and employees of said board; to authorize the State board to prepare and promulgate a sanitary code for the State of Louisiana, and fixing penalties for the violation thereof; to provide for the gereral sanitation of the State, and a local sanitation of the parishes and municipalities; to authorize the regulation of the isolation of cases of infectuous and contagious diseases and a maritime and land quarantine against places infected with such diseases; to repeal all laws and parts of laws, special and general, in conflict with the provisions of this act; and to provide for the succession of the boards created by this act to all powers, authority, rights, claims and property of the present boards."

By the second section of the act the duties and powers of the president and secretary and treasurer of the State board were declared to be those incident to like officers in similar corporations, and also such other powers and duties then devolved by law upon their predecessors in the existing board as well as those additionally prescribed by the provisions of the act. In addition to said
24 powers and duties already prescribed by existing laws, the president was granted the power after the adjournment of the board, and during the interval of time between the meetings of the board and when the board was not in session, to issue all orders and war-

rants, and to take all necessary steps to execute the sanitary laws of the State, and to carry out the rules, ordinances, and regulations of the board made therein, and in his discretion to call special meetings of the board whenever in his opinion an emergency should require it.

By the third section the board was granted all the powers, authority, and jurisdiction then possessed by the existing board of health under the laws then in force, except in so far as modified and changed by the provisions of the new law.

It was given exclusive jurisdiction, control, and authority over maritime quarantine within the State, as then provided by existing laws.

It was also given supervisory power over land quarantine and over the care and control of infectuous and contagious diseases within the State in order to accomplish the subsidence and suppression thereof and to prevent the spread of the same. Such supervision and control was directed to be exercised in the manner and to the extent laid down in the act.

By the eighth section it was enacted that in case any parish, town, or city should become infected with any contageous or infectious disease to such an extent as to threaten the spread of such disease to other portions of the State, the State Board of Health was directed to issue its proclamation declaring the facts and ordering it in quarantine and to order the local boards of health in other parishes, towns, and cities to quarantine against said locality, and it was further directed to establish and promulgate the rules and regulations, terms, and conditions on which intercourse with said infected locality should be permitted.

The State Board of Health was authorized, at its discretion, to prohibit the introduction into any infected portions of the State of persons acclimated, unacclimated, or said to be immune when in its judgment the introduction of such persons would add to or increase the prevalence of the disease.

25 Plaintiff contends that the State Board of Health requires that the court should read in the eighth section of act No. 192 of 1898 a grant of authority to prohibit the introduction into the State of healthy persons coming from places not infected with infectuous or contagious diseases.

In their brief they say: "If this was the intention of the legislature, why did it express its object to be 'to authorize a maritime and land quarantine' against places 'infected' with contagious or infectious diseases? If an authority was intended to be given to establish maritime quarantine against any place whatsoever, without reference to the existence of disease there, the legislature would certainly not have qualified the noun 'places' by the adjective 'infected.'

"It is clear that the effect of that adjective is to qualify and make special what was before general; to limit the number, and, as it were, to put a badge upon the places against which maritime quarantine can be declared, and hence to put a restriction upon the power of the board.

"If the existence of disease at some place or in relation to some individual was not a condition upon the board's power to quarantine, it inevitably follows that the act contains something supremely important not expressed in its title, namely, a power to quarantine against any place and exclude from the State any people whatsoever, totally irrespective of the existence of infectuous or contagious disease in relation to such person or place.

"We submit that the court will not adopt a course of reasoning which leads to this result.

"It must presume that the legislature intended to obey article 31 of the constitution, and to sanction no object in the act not expressed in the title. *A fortiori*, will the court indulge the presumption, when it finds that the title of the act declares the intention of conferring a limited and defined as opposed to a general power, as the legislature was bound by the constitutional mandate to do; that the measure of the power granted in relation to maritime quarantine is declared by the act to be fixed by existing laws in force, which laws are conceded by the contention of the defendants in this case to confer only a limited power, and plaintiff
26 urges that if the statute of 1898 did authorize the State Board of Health to exclude from this State healthy persons coming from other States or from foreign countries, it was not a lawful exercise of the legislative power by the State of Louisiana.

"That the statute on its face and as applied is void for the reason that it is in violation of article 1, section 8, of the Constitution of the United States, because it vests authority in the State Board of Health in its discretion to interfere with or prohibit foreign commerce; because it deprives the plaintiff of its liberty and property without due process of law, and denies it the equal protection of the law, in violation of section one of the fourteenth article of amendment of the Constitution of the United States.

"Because it denies rights, privileges, and immunities secured to subjects of the King of Italy and to the citizens of the Republic of France by treaties between the United States and said countries, in that it vests the board of health with power to deny the right of free visitation and trade to Italian subjects and French citizens as granted by said treaties.

"Because it is in conflict with the immigration laws of the United States made in pursuance of the Constitution of the United States."

We would not render act No. 192 of 1898 unconstitutional as violative of article 31 of the constitution of 1898, which declares that "every law enacted by the General Assembly shall embrace but one object and that shall be expressed by its title," by holding that that act conferred authority upon the State Board of Health to prohibit the introduction into any infected portion of the State — persons acclimated, unacclimated, or said to be immune coming on shipboard from foreign countries and ports, whether infected or not, when in its judgment the introduction of such persons would add to or increase the prevalence of the disease.

Were we to hold that the act conferred such power, the granting

of the power in the body of the act could be very legitimately referred to several different clauses of the title.

It would be very properly covered either by its declared object of "carrying into effect article 296 of the constitution of the State in relation to boards of health, providing for the establishment and organization of a State board of health and of defining the
27 power, duty, and authority of said board," or its object "of protecting and preserving the public health," or "of authorizing the regulation of the isolation of infectious and contagious diseases."

We have ourselves recently held in the case of Allopathic State Board of Medical Examiners *vs.* Fowler, 50th Ann., that it is a sufficient compliance with the constitutional requirements of the title if the title indicates the general purposes of the law without specifying in detail each particular provision of the law.

(See on this subject 23rd vol. Am. & Eng. Ency. of Law, page 229 *et seq.*; Cooley's Constitutional Limitations, page 173; State of Louisiana *vs.* Crowley, Nolan, Giles, and Bertin, 33rd Ann., 783; State *vs.* Dalon, 35th Ann., 1141; American Printing House *vs.* Dupuy, 37th Ann., 188.)

Appellants urge upon us that the General Assembly did not intend, by and through act No. 192 of 1898, to confer upon the State board of health the power which it exercised of preventing them from landing the Britania and its passengers, as stated in their petition, nor did it do so.

We do not think this proposition well founded. There is nothing in the terms of the statute which would justify us in giving to it the narrow construction for which plaintiffs contend.

The fact that the title contains a clause to authorize a "maritime and land quarantine against places infected with infectious and contagious diseases" is not inconsistent with nor does it control or circumscribe the broad and general terms of other clauses.

Appellee properly claims that it in nowise affects the "power," "duty," and "authority" of the board to prevent the spread of the disease when once introduced by quarantining against persons coming into an infected district.

The act, in its title, authorizes the State board to regulate the isolation of cases of infectious and contagious diseases, leaving it to adopt the method to be pursued for bringing about this isolation.

In its body it confers, in very broad terms, a supervisory power over the case and control of infectious diseases within the State, "in order to accomplish the subsidence and suppression thereof
28 and to prevent the spread of the same."

That no doubt could exist as to the scope of the power, it conferred upon the board "the right to regulate the terms and conditions on which intercourse with infected localities should be permitted," and in clear, unambiguous language authorized it at its discretion to prohibit the introduction into any infected portion of the State — persons acclimated, unacclimated, or said to be immune,

when in its judgment the introduction of such persons would add to or increase the prevalence of the disease.

The law does not limit the board to prohibiting the introduction of persons from one portion of the State to another and an infected portion of the State, but evidently looked as well to the prohibition of the introduction of persons from points outside of the State into any infected portion of the State. As the object in view would be "to accomplish the subsidence and suppression of the infectious and contagious diseases and to prevent the spread of the same," it would be difficult to see why parties from outside of the State should be permitted to enter into infected places, while those from the different parishes should be prevented from holding intercourse with each other.

The object in view was to keep down, as far as possible, the number of persons to be brought within danger of contagion or infection, and by means of this reduction to accomplish the subsidence and suppression of the disease and the spread of the same.

The particular places from which the parties, who were to be prohibited from entering the infected district or districts, came could have no possible influence upon the attainment of the result sought to be attained.

It would make no possible difference whether this "added fuel" sought to be excluded should come from Louisiana, New York, or Europe.

We see nothing in the particular place in the act in which this power is conferred to cause us to suppose that the legislature intended to place upon it the limitations which appellants contend for. They claim that the powers of the present board were those of its predecessor, but this is obviously not the case.

The new board was given by the third section of the act the powers of the old, but with such modifications as would be operated under the provisions of the article of 1898.

29 It is very clear that the General Assembly intended to grant additional powers to the board, and this very power was beyond question one of them.

During the fall of 1897, and during the existence of an epidemic, a vessel arrived in the Mississippi river with emigrants aboard under conditions similar to those under which the Britania reached the same stream in 1898.

The excited public discussions at the time as to the right of the State board, under the then existing law, to prevent the landing of the emigrants and as to its duty in the premises were so extended as to authorize us to take judicial notice of the fact, and in our opinion the clause in the present act which covers that precise matter was inserted therein for the express purpose of placing the particular question outside of the range of controversy.

For a number of years past emigrants have been coming into New Orleans in the autumn from Italy.

There was a probability when the General Assembly met in 1898 that the epidemic of 1897 might be repeated, and a great probability that emigrants would seek to enter, as they had done the year be-

fore, to the great danger not only of the people of Louisiana, but of the emigrants themselves.

Independently of this, there was great danger to be apprehended from the increasing intercourse between New Orleans and the West India islands in consequence of a war with Spain.

It was to ward off these dangers that this particular provision was inserted in the act of 1898.

Appellants maintain that the act of the General Assembly is violative of the Constitution of the United States and in contravention of its treaties with France and Italy and its immigration laws.

We are not of that opinion.

It is the right and duty of the different States to protect and preserve the public health.

This right is not held by the States by permission of the Federal Government, nor is its legitimate and proper exercise controlled by that Government simply by reason of the existence of a power in the latter "to regulate commerce."

30 As a matter of course, State legislation which would cross the boundary line which separates the State's police power of protecting the public health to really interfere with and invade the right and power of the General Government to regulate commerce would be set aside, but it is not every restriction upon commercial operations, remotely and incidentally brought about by the passage of State health laws, which can properly be designated as such interference or invasion.

In re Rahrer, 140th U. S., 554, the Supreme Court of the United States, speaking through Chief Justice Fuller, made use of the following language:

"The power of the State to impose restraints and burdens upon persons and property in conservation and promotion of the public health, good order, and prosperity is a power originally and always belonging to the States, not surrendered by them to the General Government nor directly restrained by the Constitution of the United States, and essentially exclusive.

"And this court has uniformly recognized State legislation, legitimately for police purposes, as not in the sense of the Constitution infringing upon any right which has been confided expressly or by implication to the General Government.

"The fourteenth amendment, in forbidding a State to make or to enforce any law abridging the privileges and immunities of citizens of the United States, or to deprive any person of life, liberty, or property without due process of law, or to deny to any person the equal protection of the laws, did not invest nor attempt to invest Congress with power to legislate upon subjects which are within the domain of State legislation.

"It is not to be doubted that the power to make ordinary regulations of police remains with the individual States and cannot be assumed by the National Government, and that in this respect it is not interfered with by the fourteenth amendment."

In Gibbons *vs.* Ogden, 9 Wheaton, page 203, Chief Justice Mar-

shall, referring to State inspection laws, said that "they were certainly recognized in the Constitution as being passed in the exercise of a power remaining with the States.

"That inspection laws might have a remote and considerable influence upon commerce could not be denied, but that a power
31 to regulate commerce could not be admitted as the source from which the right to pass them was derived.

"That they formed a portion of that immense mass of legislation which embraces everything within the territory of a State not surrendered to the General Government, all of which could be most advantageously exercised by the States themselves.

"That inspection laws, health laws of every description, as well as laws for regulating the internal commerce of a State and those which respect turnpike roads, ferries, etc., were component parts of this mass.

"That no direct general power over those objects was granted to Congress, and consequently they remained subject to State legislation."

The General Assembly of this State, in enacting act No. 192 of 1898, was not acting or claiming to act under "a power to regulate commerce," as the source from which it derived the right to pass the act.

Its source was the police power of the State, exercised for the protection and preservation of the public health.

No one who reads the act or who knows and appreciates the circumstances under which it was enacted can for a moment doubt the perfect sincerity of the General Assembly in dealing with this matter.

It was futile to say that there was any other purpose in view than that which appears on the face of the act.

There could exist no other possible motive than that announced.

None other could be plausibly suggested.

We not only think the legislature acted in absolute good faith and under no disguisement, but are of the opinion that the legislation was timely and judicious, well calculated to assist "in accomplishing the subsidence and suppression of infectious and contagious diseases and preventing the spreading of same," and we are further of the opinion that the action of the State board was legally taken under the provisions of the act, and not arbitrary and unjustifiable as claimed.

The conclusions we have reached as to the provisions of act No. 192 not being unconstitutional, as infringing upon the right and power of Congress to regulate commerce, carries with it as a result the holding by this court that the act was not in contravention of the treaties of the United States with France or Italy
32 or of the im-igration laws of the General Government, or of any rights secured by the fourteenth amendment of the Constitution of the United States.

The treaties and laws of the United States must be held to have been passed with reference to and subsidiary to the rightful exercise of the police power by the different States in aid of the protec-

tion and preservation of the public health within their respective borders.

We scarcely think it could be pretended that an act of the General Assembly of Louisiana, under the provisions of which a shipload of citizens of the State of New York could be legally prevented from being landed in the city of New Orleans during an epidemic, could by reason of a treaty be held, as against foreigners coming to our shores, to be inoperative, null, and void.

They could have no broader rights than our own citizens in this matter, and should be subjected to the same restrictions and inconveniences which they are when these are demanded at their hands for the preservation and protection of the public health.

The claim of the plaintiffs that they have been deprived in the premises of their liberty and property without due process of law is utterly untenable.

They have not been deprived of liberty nor of property, but simply prevented from doing an act which, if permitted to be done, would not only be to the great injury and damage of the people of Louisiana, but in all likelihood to the great damage and injury of the passengers upon their ship.

We do not see "what process of law" beyond that taken could have been taken by the health authorities.

It is very unfortunate that plaintiffs' ship and her passengers should have been detained as they were, but, if loss has been suffered, it is *damnum absque injuria*.

The defendant board is not an ordinary corporation; it is a "body politic," with corporate powers, with the right to sue and be sued.

It is a governmental public agency, representing the State in respect to the matters with which it stands enfrusted.

Were this court to find plaintiffs entitled to a judgment, it would not be an ordinary judgment, susceptible of execution by *fi. fa.*
33 The judgment would be substantially one against the State, and of the character of those referred to in article 192 of the present constitution.

Plaintiffs charge that the resolution adopted by the board of health, though general in terms, was in reality directed specially against them.

The arrival of plaintiffs' ship under the circumstances it did may have given rise to the resolution as evidencing a necessity for action under the power conferred on the board by the act of 1898, but the fact that it was the first person to whom the resolution was made to apply would not justify the charge that it was specially aimed in an offensive sense at the plaintiffs.

The resolution is general, and there is no reason to suppose that it would not have been executed against any other ship or ships which might fall under its terms.

Be that as it may, if the board had the legal power and right to act as it did, the motive with which it may have been done is not a matter for our consideration.

Our conclusions absolve necessarily the members of the board from legal liability for their course.

For the reasons assigned it is ordered and decreed that the judgment appealed from be, and the same is hereby, affirmed.

Petition for Writ of Error and Order.

The Supreme Court of Louisiana.

LA COMPAGNIE FRANCAISE DE NAVIGATION A VAPEUR
vs.
THE STATE BOARD OF HEALTH OF LOUISIANA ET ALS. } No. 13076.

To the Honorable Francis T. Nicholls, chief justice of the supreme court of Louisiana, and to the said court:

The petition of La Compagnie Francaise de Navigation a Vapeur, plaintiff in the above entitled and numbered cause, respectfully shows—

That in the record and proceedings, and also in the rendition of the final judgment in this cause by the honorable the supreme
34 court of Louisiana, there was drawn in question the validity of a statute of said State of Louisiana, to wit, act No. 192 of 1898, on the ground of its being repugnant to and in contravention of the Constitution of the United States and repugnant to and in contravention of the laws and treaties made by virtue of and in pursuance thereto, and especially repugnant to and in contravention of paragraph 4 of section 8 of article 1 of the said Constitution and section 1 of the 14th article of amendment thereof, and of article 1 of the treaty of February 26, 1871, being the treaty of the United States with the Kingdom of Italy, and of the treaty of April 30th, 1803, art. VIII, being the treaty of the United States with the Republic of France, and other treaties with the same country, and repugnant to and in contravention of the following immigration acts of Congress, to wit:

Act approved March 3, 1875, chap. 141.
Act approved Aug. 3, 1882, chap. 376.
Act approved June 26, 1884, chap. 121.
Act approved Feb'y 26, 1885, chap. 164.
Act approved March 23, 1887, chap. 220.
Act approved March 3, 1891, chap. 551.

That there was also drawn in question the said paragraph 4, section 8, of article 1 of the said Constitution of the United States and the 14th article of amendment thereof and all of the aforesaid treaties and acts of Congress, and the said decision of the said supreme court of Louisiana was against the rights, titles, privileges, and immunities specially set up and claimed under said articles of said Constitution and under the said treaties and acts of Congress.

That the said judgment of the said supreme court of Louisiana is now final, and the said court is the highest court of law and equity of the said State in which a decision of this cause could be had.

That, as the plaintiff is advised, informed, and believes, there is error to its prejudice in the said final judgment rendered against it, as aforesaid, and that said plaintiff has a right and desires to have the said cause removed by writ of error to the Supreme Court of the United States.

Wherefore petitioner prays that the writ of error herewith presented may be allowed, and the bond herewith presented
35 approved, and a citation to the defendants and each of them in this cause duly signed in accordance with the acts of Congress, and for all general relief.

(Signed) HOWE, SPENCER & COCKE,
Att'ys for Petitioner.

Order.

Let a writ of error be allowed in this cause as within prayed for and according to law, returnable to the Supreme Court of the United States within thirty days from the date hereof, upon appellant furnishing bond in the sum of $500, conditioned as the law directs.

(Signed) FRANCIS T. NICHOLLS,
Chief Justice of the Supreme Court of the State of Louisiana.

New Orleans, April 13th, 1899.

(Endorsed:) No. 13076. Supreme court of Louisiana. La Compagnie Francaise de Navigation a Vapeur *vs.* The State Board of Health of Louisiana *et als.* No. 13076. Petition for writ of error and order. Filed April 13th, 1899. (Signed) Paul E. Mortimer, deputy clerk.

Copy of Writ of Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of Louisiana, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The Compagnie Francaise de Navigation a Vapeur, plaintiff, and The State Board of Health of Louisiana, Edmond Souchon, Hampden S. Lewis, and Charles A. Gaudet, defendants, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being
36 repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the

Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said The Compagnie Francaise de Navigation a Vapeur, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so you have the same at Washington within 30 days from the date hereof, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 13th day of April, in the year of our Lord one thousand eight hundred and ninety-nine.

(Signed) E. R. HUNT,
[SEAL.] *Clerk of the Circuit Court of the United States for the Eastern District of Louisiana.*

Allowed by—
(Signed) FRANCIS T. NICHOLLS,
Chief Justice of the Supreme Court of the State of Louisiana.

(Endorsed:) No. 13076. Compagnie Francaise de Navigation a Vapeur *versus* State Board of Health *et als.* Writ of error. Copy of a writ of error lodged in the clerk's office of the supreme court of Louisiana, in pursuance of the statute in such cases made and provided, this thirteenth day of April, one thousand eight hundred and ninety-nine. (Signed) Howe, Spencer & Cocke, attorneys of plaintiff in error. Filed Ap'l 13th, 1899. (Signed) Paul E. Mortimer, dep. clerk.

37 *Assignment of Errors.*

Supreme Court.

COMPAGNIE FRANCAISE DE NAVIGATION A VAPEUR
vs.
STATE BOARD OF HEALTH FOR THE STATE OF LOUISIANA, Edmond Souchon, Hampden S. Lewis, and Charles A. Gaudet.

On writ of error to transfer case to the Supreme Court of the United States.

Assignment of errors.

And now comes the plaintiff in this suit on writ of error to remove the same to the Supreme Court of the United States and

assigns for error in the opinion and judgment of the supreme court of Louisiana in this cause the following:

I.

The supreme court of Louisiana erred in affirming the judgment of the civil district court for the parish of Orleans in this cause.

II.

The supreme court of Louisiana erred in sustaining the peremptory exception of the defendants in this cause.

III.

The supreme court of Louisiana erred in holding that the plaintiff's suit was properly dismissed by the civil district court for the parish of Orleans.

IV.

The supreme court of Louisiana erred in holding that the act of the General Assembly of Louisiana No. 192 of 1898 or any portion thereof, and especially section 8 of said act, conferred upon the defendant The State Board of Health the authority to exclude or interfere with legitimate foreign commerce as claimed by the defendants and as done by them as set forth in the pleadings in this cause.

V.

Even if section 8 of the act of the General Assembly of Louisiana No. 192 of 1898 attempted to confer upon the said de-
38 fendant, The State Board of Health, authority to exclude or interfere with legitimate foreign commerce in the manner stated in the petition and supplemental petition of the plaintiffs in this cause and admitted by the peremptory exception of the defendants herein, the supreme court of Louisiana erred in holding that section 8 of said act 192 of 1898 as construed and applied by the defendants in the premises was not repugnant to the 8th section of the 1st article of the Constitution of the United States, conferring on Congress the power to regulate commerce with foreign nations.

VI.

That even if section 8 of the act of the General Assembly of Louisiana No. 192 of 1898 did attempt to confer upon the defendant The State Board of Health the right and authority to exclude or interfere with the subjects and citizens of foreign governments seeking to enter the State of Louisiana in the manner conceded by the pleadings in this cause, the supreme court of Louisiana erred in holding that said section 8 of said act 192 of 1898, as construed and applied by the defendants, was not in conflict with the treaties between the United States, on the one part, and the Republic of France and the Kingdom of Italy, on the other parts, guaranteeing certain rights, privileges, and immunities to the subjects and citizens of

said foreign countries, the said treaties being as follows: The treaty with Italy of February 26, 1871, proclaimed November 23rd, 1871, article 1, and the treaty with France of April 30, 1803, article 8.

VII.

The supreme court of Louisiana erred in sustaining the peremptory exception of defendants and in dismissing the suit of plaintiffs in this, that section 8 of the act of the General Assembly of Louisiana No. 192 of 1898, as relied upon and applied by the defendants and as construed and applied by the court, contravenes the 14th article of amendment of the Constitution of the United States, section 1, by depriving the plaintiff of its liberty and property without due process of law and by denying to it the equal protection of the laws.

VIII.

The supreme court of Louisiana erred in holding that section 8 of the act of the General Assembly of Louisiana No. 192 of
39 1898, relied upon by the defendants and applied by them and as construed and applied by the court, did not contravene the acts of the Congress of the United States regulating foreign immigration into the United States, which acts are as follows:

March 3, 1875, chap. 141.
August 3, 1882, chap. 376.
June 26, 1884, chap. 121.
February 26, 1885, chap. 164.
March 23, 1887, chap. 120.
March 3, 1891, chap. 551.

And for these and other errors apparent on the face of the record plaintiff in error prays that the final judgment of the supreme court of Louisiana in this cause be reversed and this cause remanded to that court with instructions to reverse the judgment of the court of first instance, and to remand the cause to that court to be further proceeded with according to law, and for such other and further judgment and decree as may be proper in the premises.

(Signed) HOWE, SPENCER & COCKE,
Attorneys for Plaintiff.

(Signed) W. W. HOWE, *Of Counsel.*

(Endorsed:) No. 13076. Supreme court of Louisiana. Compagnie Francaise de Navigation a Vapeur *vs.* State Board of Health *et als.* Assignment of errors. Filed April 13th, 1899. (Signed) Paul E. Mortimer, dep. clerk.

Bond for Writ of Error.

Know all men by these presents that we, The Compagnie Francaise de Navigation a Vapeur, as principal, and James Sawers, of the city of New Orleans, as surety, are held and firmly bound unto the State Board of Health of Louisiana, Edmond Souchon, Hampden S. Lewis, and Charles A. Gaudet, of said Louisiana, in the full and just sum of five hundred dollars, to be paid to the said obligees and each of

them and their and each of their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

40 Sealed with our seals and dated this 13th day of April, in the year of our Lord one thousand eight hundred and ninety-nine.

Whereas lately, at a term of the supreme court of Louisiana, in a suit depending in said court between the said Compagnie Francaise de Navigation a Vapeur, plaintiff, and the said The State Board of Health of Louisiana, Edmond Souchon, Hampden S. Lewis, and Charles A. G ndet, defendants, No. 13076, a final judgment was rendered against the said plaintiff, The Compagnie Francaise de Navigation a Vapeur, and the said plaintiff company, principal obligor herein, having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the final judgment in the aforesaid suit, and a citation directed to the said obligees, citing and admonishing them to be and appear before the Supreme Court of the United States, to be holden at Washington, within 30 days from the date thereof:

Now, the condition of the above obligation is such that if the said The Compagnie Francaise de Navigation a Vapeur, plaintiff in error, shall prosecute its said writ of error to effect and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

COMP. FRANCAISE DE NAVIGATION A VAPEUR,

(Signed) P. pro. JAMES SAWERS & SONS, [SEAL.]
Agents.

(Signed) EDMUND J. WHEELAHAN. [SEAL.]

(Signed) JAMES SAWERS. [SEAL.]

Sealed and delivered in presence of—

(Signed) W. W. HOWE.

Approved by—

(Signed) FRANCIS T. NICHOLLS,
Chief Justice of the Supreme Court of the State of Louisiana.

(Endorsed:) I have no objection to this bond. (Signed) F. C. Zacharie, att'y for def'd'ts & appellees. No. 13076. Compagnie, &c., *vs.* State Board of Health. Bond. Filed April 13th, 1899. (Signed) Paul E. Mortimer, dep. clerk.

41 *Stipulation as to Transcript.*

Supreme Court of Louisiana.

COMPAGNIE FRANCAISE DE NAVIGATION A VAPEUR
vs.
STATE BOARD OF HEALTH ET ALS. } No. 13076.

In order to diminish the record and exclude therefrom all unnecessary matter it is hereby stipulated and agreed between counsel for the plaintiff and for the defendants that for the purpose of a writ of error to the Supreme Court of the United States the record in this cause shall consist of—

1st. Copy of the original petition and Exhibits A and B annexed thereto.

2nd. Copy of the supplemental and amended petition.

3rd. Copy of the exception of no cause of action filed in behalf of the defendants.

4th. The judgment of the civil district court, division C, dismissing the plaintiff's suit.

5th. The motion of the plaintiff for a suspensive appeal to the supreme court of Louisiana.

6th. The bond for a suspensive appeal given by the plaintiff.

7th. The assignment of errors filed in the supreme court of Louisiana by the plaintiff.

8th. The opinion and decree of the supreme court of Louisiana affirming the judgment of the civil district court, division C.

9th. The petition for a writ of error to the Supreme Court of the United States.

10th. The writ of error to said Supreme Court of the United States.

11th. Assignment of errors in Sup. Ct. U. S.

12th. The supersedeas bond given by the plaintiff.

(Signed) HOWE, SPENCER & COCKE,
Att'ys for Def'd't.

(Do.) F. C. ZACHARIE,
Att'ys for Def'd'ts.

(Endorsed:) No. 13076. Supreme court of Louisiana.
42 Compagnie Francaise de Navigation a Vapeur *vs.* State Board of Health *et als.* Stipulation as to transcript. Filed April 13th, 1899. (Signed) Paul E. Mortimer, dep. clerk.

Clerk's Certificate.

UNITED STATES OF AMERICA, }
State of Louisiana. }

Supreme Court of the State of Louisiana.

I, Thomas McCabe Hyman, clerk of the supreme court of the State of Louisiana, do hereby certify that the foregoing forty-two

pages contain a full, true, and complete copy of the transcript of the proceedings had in the civil district court for the parish of Orleans, wherein The Compagnie Francaise de Navigation a Vapeur were plaintiffs and The State Board of Health, through Edmond Souchon, its president, and said Edmond Souchon, Hampden S. Lewis, and Charles A. Gaudet were defendants, and also of all the proceedings had in this supreme court on the appeal taken by said plaintiffs, which appeal is now on the files thereof under No. 13076.

In testimony whereof I have hereunto set my hand and affixed the seal of this honorable court, at the city of New Orleans, this fifteenth day of April, anno Domini one thousand eight hundred and ninety-nine, and in the one hundred and twenty-third year of the Independence of the United States of America.

Seal Supreme Court of the State of Louisiana.

T. McC. HYMAN, *Clerk.*

Certificate of the Chief Justice.

UNITED STATES OF AMERICA, *State of Louisiana.*

Supreme Court of the State of Louisiana.

I, Francis Tillou Nicholls, chief justice of the supreme court of the State of Louisiana, do hereby certify that Thomas McCabe
43 Hyman is clerk of the supreme court of the State of Louisiana; that the signature of Thomas McCabe Hyman to the foregoing certificate is in the proper handwriting of him, the said clerk; that said certificate is in due form of law, and that full faith and credit are due to all of his official acts as such.

In testimony whereof I have hereunto set my hand and seal, at the city of New Orleans, this fifteenth day of April, in the year of our Lord one thousand eight hundred and ninety-nine, and of the Independence of the United States of America the one hundred and twenty-third.

Seal Supreme Court of the State of Louisiana.

FRANCIS T. NICHOLLS,
Chief Justice.

44 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of Louisiana, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had, in the said suit between The Compagnie Francaise de Navigation à Vapeur, plaintiff, and The State Board of Health of Louisiana, Edmond Souchon, Hampden S. Lewis, and Charles A. Gaudet, defendants, wherein was drawn in question the validity of a treaty or

statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the
45 construction of the clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said The Compagnie Francaise de Navigation à Vapeur, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, within 30 days from the date hereof, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 13th day of April, in the year of our Lord one thousand eight hundred and ninety-nine.

{Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La.}

E. R. HUNT,
Clerk of the Circuit Court of the United States for the Eastern District of Louisiana.

Allowed by—
FRANCIS T. NICHOLLS,
Chief Justice of the Supreme Court of the State of Louisiana.

46 [Endorsed:] No. 13076. Compagnie Francaise de Navigation a Vapeur *versus* State Board of Health *et als.* Writ of error. Filed Ap'l 13th, 1899. Paul E. Mortimer, dep. clerk.

47 THE UNITED STATES OF AMERICA:

Supreme Court of Louisiana.

The President of the United States to the State Board of Health of Louisiana, Edmond Souchon, Hampden S. Lewis, and Charles A. Gaudet, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of

Washington, within 30 days from date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of Louisiana, wherein The Compagnie Francaise de Navigation à Vapeur is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said Compagnie Francaise de Navigation à Vapeur, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 13th day of April, in the year of our Lord one thousand eight hundred and ninety-nine.

FRANCIS T. NICHOLLS,
Chief Justice of the Supreme Court of the State of Louisiana.

Service accepted for defendants in error.

F. C. ZACHARIE,
Att'y for Def'd'ts in Error.

48 [Endorsed:] United States circuit court, eastern district of Louisiana. No. 13076. Compagnie Francaise de Navigation a Vapeur *vs.* State Board of Health *et als.* Citation. Marshal's return. Filed Ap'l 13th, 1899. Paul E. Mortimer, dep. clerk.

Endorsed on cover: File No., 17,396. Louisiana supreme court. Term No., 286. The Compagnie Francaise de Navigation à Vapeur, plaintiff in error, *vs.* The State Board of Health of Louisiana, Edmond Souchon, Hampden S. Lewis, & Charles A. Gaudet. Filed May 6th, 1899.

Office Supreme
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JAMES H. McKEN

No. 50. 4.

Brf. of Howe for P. C.

United States Supreme Court.

Filed Oct. 11, 1900.

OCTOBER TERM, 1900.

No. 50.

(OCTOBER TERM, 1899—No. 286.)

COMPAGNIE FRANÇAISE DE NAVIGATION À VAPEUR, - - Plaintiff in Error,

VERSUS

THE STATE BOARD OF HEALTH OF LOUISIANA, et als. - Defendants in Error.

In Error to the Supreme Court of Louisiana.

Brief in behalf of the Plaintiff in Error.

W. W. HOWE,

W. B. SPENCER,

Of Counsel.

T. H. THOMASON, PRINT, 526 NATCHEZ ST., N. O.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 286.

COMPAGNIE FRANÇAISE DE NAVIGATION À VAPEUR, PLAINTIFF IN ERROR,

versus

THE STATE BOARD OF HEALTH OF LOUISIANA, EDMOND SOUCHON, HAMPDEN S. LEWIS AND CHARLES A. GAUDET, DEFENDANTS IN ERROR.

In Error to the Supreme Court of the State of Louisiana.

BRIEF FOR PLAINTIFF IN ERROR.

I.

STATEMENT OF THE CASE.

This case comes into this Court upon a Writ of Error to the Supreme Court of Louisiana. The writ is sued out to reverse a judgment of that court affirming a judgment of the Civil District Court for the Parish of Orleans, which maintained an exception of no cause of action filed by the defendants in error to the original and supplemental petitions of the plaintiff below, plaintiff in error here, and dismissed its suit.

An exception of no cause of action, under the practice prevailing in Louisiana, is the equivalent of a general demurrer. **It is not disputed that such an exception admits as true all allegations of fact which are well pleaded in the petition.**

The original petition of the plaintiff in error tendered the following case:

1. The plaintiff in error is a corporation existing under the laws of the French Republic, is a citizen of said Republic, and is domiciled at Marseilles. It is the owner of a large number of steamships, and especially of the Steamship "Britannia," and is engaged in the business of transporting freight and passengers for hire from various Mediterranean ports to various ports in the United States, and more particularly to the Port of New Orleans.

2. The defendant in error, the State Board of Health, is a body corporate created by Act No. 192 of the General Assembly of the State of Louisiana of the year 1898. Said Board is composed of seven members, and is charged by the provisions of said Act with the protection and preservation of the public health, the duty of promulgating a sanitary code for the State, the regulation of infectious and contagious diseases therein, and is vested with power to prescribe a land and maritime quarantine against places infected with such diseases. The Board is given power **to sue and capacity to be sued**, and is domiciled in the City of New Orleans.

3. The other defendants in error are members of said Board, citizens of the State of Louisiana, and residents of the City of New Orleans.

4. In the early part of September, 1898, the plaintiff in

error caused its Steamship "Britannia" to be cleared from the ports of Palermo, Sicily, and Marseilles, France, for the Port of New Orleans. Said Steamship carried one hundred tons (100) of general merchandise and 408 passengers. Both freight and passengers were destined for the Port of New Orleans. Some of the passengers were citizens of the United States returning to their homes, and others were subjects of the King of Italy intending to avail themselves of the immigration laws of the United States, and to enter and settle in the State of Louisiana and adjoining States.

5. The said passengers were in all respects and at that time free from infectious and contagious diseases, and were so free on the arrival of the said Steamship, on the 29th of September, 1898, at the Quarantine Station established by the defendant Board on the Mississippi River below the City of New Orleans. On that day, in accordance with the rules of said Board, the said "Britannia" was regularly inspected and her freight and passengers examined by the officers of the Board, and the same being found entirely free from disease of any kind, the said officers accordingly issued to the said vessel a clean bill of health.

6. Notwithstanding the issue of this clean bill of health, and although under the rules established by the defendant Board the "Britannia" should have been permitted at once to proceed to the Port of New Orleans and there discharge, and although her cargo and passengers continued free of disease, the said Board, on the 29th of September, 1898, at a special meeting convened at the City of New Orleans, whereat the other defendants in error, to-wit: Souchon, Gaudet and Lewis, were present and voted affirmatively, passed a resolution prohibiting the said vessel from coming

into the Port of New Orleans. A copy of this resolution was sent by the said Board to the agents of the plaintiff in error at New Orleans. The resolution is as follows:

"September 29th, 1898.

"Resolution adopted in special session by the Louisiana State Board of Health, September 29th, 1898:

"Resolved, That hereafter, in the case of any town, city or parish of Louisiana being declared in quarantine, no body or bodies of people, immigrants, soldiers or others shall be allowed to enter said town, city or parish so long as said quarantine shall exist, and that the President of the Board shall enforce this resolution.

G. FARRAR PATTON, M. D., Sec'ty."

The letter accompanying the foregoing resolution is as follows:

"Louisiana State Board of Health,
September 29th, 1898.

"Messrs. Jas. Sawers & Son,
Agents S. S. Britannia, New Orleans, La.

"Gentlemen: Referring to the detention of the S. S. 'Britannia' at the Mississippi River Quarantine Station, with 408 Italian immigrants on board, I have to inform you that under the provisions of the new State Board of Health law, Section 8, of which I enclose a marked copy, this Board has adopted a resolution forbidding the landing of any body of people in any town, city or parish in quarantine. Under this resolution the immigrants now on board the 'Britannia' cannot be landed in any of the following parishes of Louisiana, namely: Orleans, St. Bernard, Jefferson (right bank), St. Tammany, Plaquemines, St. Charles, or St. John. You will therefore govern yourselves accordingly.

Respectfully,
EDMOND SOUCHON, M. D.,
President Louisiana State Board of Health."

Subsequent to the foregoing resolution and notice, the President of the defendant Board further notified the agents of the plaintiff in error at New Orleans that if any attempt

was made to land the "Britannia's" passengers at any place contiguous to the port of New Orleans, in the State of Louisiana, not then quarantined, that quarantine would at once be established and enforced at such place. The effect of this action was to prevent the vessel from landing her cargo or discharging her passengers anywhere in the State of Louisiana.

7. It is alleged by the petition that the resolution aforesaid, while purporting on its face to be general in character, was, in fact, specially directed toward preventing and prohibiting the landing of the cargo and passengers of the "Britannia," inasmuch as both prior and subsequent to the passage of the said resolution, the defendants in error had permitted large bodies of people coming from the same port in Sicily, to wit: Palermo, via the port of New York, to be brought into the City of New Orleans by rail, and that an illegal and arbitrary discrimination had been made to the prejudice of the plaintiff in error.

8. It was further alleged that the defendants in error based their asserted right to thus exclude from the State of Louisiana persons in good health coming from non-infected ports upon the following portion of Section 8 of Act 192 of 1898, to wit:

"The State Board of Health, in its discretion, may prohibit the introduction into any infected portion of the State of persons acclimated, unacclimated or said to be immune, when, in its judgment, the introduction of such persons would add to or increase the prevalence of the disease."

9. The foregoing language was alleged by the petition to confer no such power on the defendant Board, as was asserted; and if the language cited did purport to confer such a power, then the plaintiff in error averred that the same

was in violation of the Constitution of the United States, and especially of Article 1, paragraph 8, Section 3 thereof, conferring upon Congress the exclusive power to regulate commerce with foreign nations and among the several States.

10. The defendants in error were alleged to be joint tort-feasors and solidarily liable in the sum of $2,500, the amount of damages caused by their conduct up to the date of the filing of the petition.

The plaintiff in error reserved its right to amend and claim such further damages as might be found to have been sustained by the illegal and arbitrary conduct of the defendant. The petition further prayed for an injunction prohibiting further interference with the landing of the Britannia's cargo and the discharge of her passengers at the port of New Orleans.

In order to save expense, the proceedings for injunction are by stipulation omitted from this record. It suffices to say that the injunction was refused on the face of the papers.

11. After this denial, the plaintiff in error filed its supplemental petition. It reiterated the allegations of its original petition. It then set forth compliance by the detained vessel with all the laws of the United States regulating commerce with foreign nations, regulating quarantine, and immigration into the United States; the fact that the passengers of said vessel came from ports which were not infected, and were not pretended to be infected with any infectious or contagious disease; and the further fact that the vessel had sailed prior to the declaration by the Board of the existence of an infectious disease in the City of New

Orleans, and that said vessel had no notice of the intended action of the defendant Board. It further alleged that the illegal and arbitrary action of the said defendants in error in preventing and prohibiting the landing of the Britannia in the State of Louisiana, compelled the plaintiff in error to send her for the discharge of her passengers to the port of Pensacola, which was the nearest available port, and thence to send her back to New Orleans for the discharge of her cargo. There was a total delay of over three weeks, and a resulting damage of something over eleven thousand dollars, the particulars of which are specified in the petition.

The conduct of the defendants in error is alleged to be in violation of various specified laws of the United States and rules and regulations made in pursuance thereof relating to immigration from foreign countries into the ports of the United States; and to be in violation of the existing treaties between the United States on the one hand, and the Kingdom of Italy and the Republic of France on the other.

12. As already stated, the defendants excepted that the petition and the documents annexed to and made part thereof, disclosed no cause of action, and the Civil District Court so held. The plaintiff in error thereupon appealed to the Supreme Court of Louisiana, and there assigned as error the denial by the lower court of its rights under the following constitutional provisions, treaties and statutes, to-wit:

(a) Section 3 of paragraph 8 of Article 1 of the Constitution of the United States.

(*b*) Section 1 of the 14th Article of Amendment to the Constitution of the United States.

(*c*) The treaties between the United States and France and Italy.

(*d*) The Acts of Congress of August 3, 1882; June 26, 1884; February 26, 1885; March 3, 1891; February 26, 1885; February 23, 1887; March 3, 1875; all regulating foreign immigration into the United States. (Transcript, pages 10 and 11).

The judgment of the lower court having in all respects been affirmed by the Supreme Court of Louisiana, and our federal rights having been denied (pp. 22-25), this Writ of Error was taken.

II.

In this Court the plaintiff in error has filed the following:

ASSIGNMENT OF ERRORS.

(1)

The Supreme Court of Louisiana erred in affirming the judgment of the Civil District Court for the Parish of Orleans in this cause.

(2)

The Supreme Court of Louisiana erred in sustaining the peremptory exception of the defendants in this cause.

(3)

The Supreme Court of Louisiana erred in holding that the plaintiff's suit was properly dismissed by the Civil District Court for the Parish of Orleans.

(4)

The Supreme Court of Louisiana erred in holding that the Act of the General Assembly of Louisiana, No. 192 of

1898, or any portion thereof, and especially Section 8 of said act, conferred upon the defendant, the State Board of Health, the authority to exclude or interfere with legitimate foreign commerce as claimed by the defendants and as done by them as set forth in the pleadings in this cause.

(5)

Even if Section 8 of the Act of the General Assembly of Louisiana, No. 192 of 1898, attempted to confer upon the said defendant, the State Board of Health, authority to exclude or interfere with legitimate foreign commerce in the manner stated in the petition and supplemental petition of the plaintiffs in this cause, and admitted by the peremptory exception of the defendants herein, the Supreme Court of Louisiana erred in holding that Section 8 of said Act 192 of 1898, as construed and applied by the defendants in the premises, was not repugnant to the 8th Section of the 1st Article of the Constitution of the United States, conferring on Congress the power to regulate commerce with foreign nations.

(6)

That even if Section 8 of the Act of the General Assembly of Louisiana, No. 192 of 1898, did attempt to confer upon the defendant, the State Board of Health, the right and authority to exclude or interfere with the subjects and citizens of foreign governments seeking to enter the State of Louisiana in the manner conceded by the pleadings in this cause, the Supreme Court of Louisiana erred in holding that said Section 8 of said Act No. 192 of 1898, as construed and applied by the defendants, was not in conflict with the treaties between the United States, on the one part, and the Repub-

lic of France and the Kingdom of Italy, on the other parts, guaranteeing certain rights, privileges and immunities to the subjects and citizens of said foreign countries, the said treaties being as follows: The treaty with Italy of February 26, 1871, proclaimed November 23d, 1871, Article 1, and the treaty with France of April 30, 1803, Article 8.

(7)

The Supreme Court of Louisiana erred in sustaining the peremptory exception of defendants and in dismissing the suit of plaintiffs in this, that Section 8 of the Act of the General Assembly of Louisiana, No. 192 of 1898, as relied upon and applied by the defendants and as construed and applied by the Court, contravenes the 14th Article of Amendment of the Constitution of the United States, Section 1, by depriving the plaintiff of its liberty and property without due process of law and denying to it the equal protection of the laws.

(8)

The Supreme Court of Louisiana erred in holding that Section 8 of the Act of the General Assembly of Louisiana, No. 192 of 1898, relied upon by the defendants and applied by them, and as construed and applied by the Court, did not contravene the Acts of the Congress of the United States regulating foreign immigration into the United States, which Acts are as follows:

March 3, 1875, Chap. 141.
August 3, 1882, Chap. 376.
June 26, 1884, Chap. 121.
February 26, 1885, Chap. 164.
March 23, 1887, Chap. 120.
March 3, 1891, Chap. 551.

And for these and other errors apparent on the face of the record, plaintiff in error prays that the final judgment of the Supreme Court of Louisiana in this cause be reversed and this cause remanded to that Court, with instructions to reverse the judgment of the Court of first instance, and to remand the cause to that Court to be further proceeded with according to law, and for such other and further judgment and decree as may be proper in the premises.

III.

These assignments will be grouped and discussed in this brief under the following points:

STATEMENT OF POINTS.

First. The statute drawn in question, on its face and as construed and applied, is void for the reason that it is in violation of Article I, Section 3, Paragraph 8, of the Constitution of the United States, inasmuch as it vests authority in the State Board of Health, in its discretion, to interfere with, or prohibit interstate and foreign commerce.

Second. The statute is void for inasmuch as it is in conflict with Section 1 of the fourteenth Article of Amendment to the Constitution of the United States, in that it deprives the plaintiff of its liberty and property without due process of law, and denies to it the equal protection of the law.

Third. The statute, as construed and applied, is void for the reason that it is in conflict with treaties between the United States on the one part and the Kingdom of Italy and the Republic of France on the other parts, guaranteeing certain rights, privileges and immunities to the subjects and citizens of said countries.

Fourth. The statute, as construed and applied, is void, because it is in conflict with the laws of the United States relating to foreign immigration into the United States.

IV.

FIRST POINT.

The statute drawn in question, on its face and as constuted and applied, is void for the reason that it is in conflict with Article 1, Section 3, Paragraph 8, of the Constitution of the United States, inasmuch as it vests the State Board of Health, in its discretion, with power to interfere with, or prohibit interstate and foreign commerce.

Cases of this character have so often been before this Court, that the general rules by which the case at bar is to be determined may be said to be definitely fixed and settled. It suffices, then, in our opinion, to briefly summarize them. We accordingly submit that the following propositions are well settled by the decisions of this Court:

First. The power to regulate interstate and foreign commerce is exclusively vested in Congress, and this power extends moreover to all necessary instruments of commerce.

Second. By commerce is meant not merely barter and traffic in merchandise, but also exchange of commodities, navigation, the transportation of passengers and the intercourse of people with each other.

Third. The power to regulate commerce is one which affects many subjects, varied and quite unlike in their natures. Some are in their nature of national importance, and subject of uniform regulation, while others are of minor importance, and require regulation of an infinite

variety to suit each local condition. As to such subjects as are national in character, and as are susceptible of one uniform system or plan of regulation, they may be justly said to belong to that class over which Congress has exclusive jurisdiction, and concerning which the States are not permitted to legislate in any respect. As to those that are of minor or local significance, which require to be provided for by such divers rules as the various localities may require, and which may be considered rather of importance to the locality than to the nation at large, the several States are permitted to legislate in the absence of legislation thereon by Congress; but, even then, when Congress does legislate upon such subjects, the State legislation is excluded and rendered inoperative in so far as it may interfere or conflict with the legislation of Congress.

Fourth. Commerce with foreign countries is in its nature national, and the States have no power to regulate or interfere with same, even in the absence of legislation by Congress, for the absence of regulation by the National Government is to be construed, not as a permission to the States to regulate the same, but as indicating an intention by Congress that such commerce be free of restrictions.

Fifth. In delegating to the National Government the exclusive power to regulate interstate and foreign commerce, the several States did not surrender to it their sovereign power to be exercised for the preservation of the health, safety and morals of its citizens.

Sixth. But whatever may be the nature or extent of this sovereign or police power, it cannot be exercised over a subject confided exclusively to the National Government,

nor can the State in its exercise, for any purpose whatever, encroach upon powers granted to the general Government, or upon rights granted or secured by the supreme law of the land. Where, therefore, a statute of a State, enacted in pursuance of such police power, invades the domain of legislation belonging exclusively to Congress, or encroaches upon powers granted to the general Government, or impairs rights secured by the supreme law of the land, it is to that extent void.

In the light of these well established principles we shall now consider this Louisiana statute as interpreted and applied by the Supreme Court of Louisiana.

The powers conferred by this statute upon the Board of Health are of the broadest and most unlimited character. It rests with that Board to say what one or more of many hundreds of contagious and infectious diseases exist; to what extent a disease must exist to render a territory infected; what part or portion of territory is infected; what kind or class of persons would, in its judgment, add to or increase the prevalence of that disease by their introduction into the State. In other words, it vests absolute jurisdiction and authority in this Board to declare non-intercourse between any part, or the whole of the State of Louisiana, and any or all the other States and foreign countries. It vests it with authority to absolutely prohibit interstate and international commerce to such an extent and for such a length of time as a majority of these seven men may determine.

In effect, the result of the judgment of the Supreme Court of Louisiana was to declare that the State of Louisiana had the power to vest authority in the State Board of

Health, in its discretion, to prohibit the introduction into any part of the State, which they may have decided was infected with a contagious or infectious disease, any and all persons, even though they might be perfectly healthy, or even immune to the prevailing disease, whenever they should declare that in their judgment the introduction of such persons would add to, or increase the prevalence of the disease. This part of the law, it is clear, is directed to the exclusion of healthy persons seeking to enter the State. The other sections of the law give the power to intercept or prevent the entrance of diseased persons. And, as in this case it is admitted that the "Britannia's" passengers were healthy, and had not come from any place where any infectious or contagious disease was prevalent, the bald question is presented, whether the State of Louisiana, in the exercise of its police power, can prohibit persons coming from foreign countries from entering its territory, upon the theory that, though healthy and otherwise not objectionable, yet, in the opinion of certain officials, they may contract a prevailing disease of some kind, and thereby tend to spread it among the people residing there.

It is in this respect, we say, that the statute, so construed and applied, is vicious and encroaches upon the powers vested in the National Government.

While so far as the consideration of the question in hand is concerned, it may be admitted that the grant of the authority aforesaid may in all respects be a beneficent and proper one for the protection of the health of citizens of Louisiana, nevertheless, its exercise is not unrestricted, but finds its limitation when it reaches or touches subjects confided to the exclusive jurisdiction of Congress, and be-

yond that point, it is inoperative, and must give way to the paramount authority of the National Government.

It is the exercise of this sovereign power by the several States that has given occasion to this Court to be often called upon to define and declare the limits of the State and Federal power, and more especially has the exercise of that power in relation to commerce been a frequent cause of appeal to this Court.

It becomes, therefore, necessary to consider and determine, with reference to interstate and international commerce, the legitimate scope and the limitations of the police power of the States.

There can be no question, from any aspect, that the police power can be exercised for the suppression of crime, disease and pauperism, and that as an incident to the exercise of that power to that end, the State may rightfully exclude from its borders criminals, paupers, or persons or goods affected with infectious or contagious diseases. Of necessity, if this power of exclusion is to be effective, there must be an opportunity to investigate and inspect not only the persons and things about to enter its borders, but also the vehicles of commerce used to transport them. And as a necessary result of this power of investigation and inspection, the State has the right to stop at its borders both interstate and international commerce a reasonable length of time to enable it to ascertain whether the persons and things, subjects thereof, are in fact in anywise affected with disease likely to prove dangerous to its citizens. And on the discovery of the existence of such disease in such persons or property, it may either exclude same, if likely to be of a permanent

character, or may detain same in quarantine, and use such means as may be necessary to suppress same, if the disease is likely to be of a temporary kind. In the same way, if there be just grounds to suspect that such persons or property have been exposed to any infectious or contagious disease, such persons or things may be detained a reasonable length of time in order to ascertain whether they are in fact infected, but no longer. Such quarantine and inspection laws, however, are in no just sense regulations of commerce; they may in a measure delay or affect it, but when legally exercised, do not regulate, or impose such burdens upon commerce as to amount to regulation within the meaning of the Constitution.

The detection and suppression or exclusion of criminals, paupers, and persons and things infected with disease is the basis and sole justification of the enforcement of quarantine and inspection laws, and when enacted for this purpose and limited to this extent, they are upheld as a valid exercise of the police power of the State. Whenever, and to the extent that they go beyond this, they amount to an interference with commerce, and invade the domain of the National Government, and are void, for the State can never in the exercise of any of its reserved powers interfere with the powers confered upon Congress in the control and regulation of legitimate interstate and international commerce.

Turning now to the decisions of this Court, it will be found that the basis upon which it has upheld the exclusion, inspection and quarantine laws of various States, is that criminals, diseased persons and things, and paupers, **are not legitimate subjects of commerce.** They may be at-

tendant evils, but are not legitimate subjects of traffic and transportation, and, therefore, in their exclusion or detention, the State is not interfering with **legitimate** commerce, which is the only kind entitled to the protection of the Constitution.

In the **License Cases, 5 How., at pages 576, 577,** Mr. Chief Justice Taney said:

"It has indeed been suggested that if a State deems the traffic in ardent spirits to be injurious to its citizens and calculated to introduce immorality, vice and pauperism into the State, it may constitutionally refuse to permit its importation notwithstanding the laws of Congress; and that a State may do this upon the same principle that it may resist and prevent the introduction of disease, pestilence or pauperism from abroad. But it must be remembered that disease, pestilence and pauperism are not subjects of commerce, although sometimes among its attendant evils. They are not things to be regulated and trafficked in but to be prevented as far as human foresight or human means can guard against them. But spirits and distilled liquors are universally admitted to be subjects of ownership and property, and are therefore subjects of exchange, barter, and traffic like any other commodity in which a right of property exists. And Congress, under its general power to regulate commerce with foreign nations, may prescribe what articles of merchandise shall be admitted and what excluded; and may therefore admit, or not, as it shall deem best, the importation of ardent spirits. And inasmuch as the laws of Congress authorize their importation, no State has a right to prohibit their introduction."

In **Leisy vs. Hardin, 135 U. S. at p. 113,** Mr. Chief Justice Fuller, referring with approbation to the decision rendered by Mr. Justice Matthews in **Bowman vs. Railway, 125 U. S. 465,** says:

"Articles in such a condition as tend to spread disease

are not merchantable, are not legitimate subjects of trade and commerce, and the self-protecting power of each State, therefore, may be rightfully exercised against their introduction, and such exercise of power cannot be considered a regulation of commerce prohibited by the Constitution; and the observations of Mr. Justice Catron in the **License Cases, 5 How. 504, 599,** are quoted to the effect that **what does not belong to commerce is within the jurisdiction of the police power of the State, but that which does belong to commerce is within the jurisdiction of the United States**; and to extend the police power over subjects of commerce would be to make commerce subordinate to that power; and would enable the State to bring within the police power 'any article of consumption that a State may wish to exclude, whether it belong to that which was drunk, or to food and clothing; and with nearly equal claims to propriety, as malt liquors and the products of fruits other than grapes stand on no higher ground than the light wines of this and other countries excluded by the effect of the law as it now stands. And it would be only another step to regulate real or supposed extravagance in food or clothing.' "

Mr. Chief Justice Fuller in **Re Rahrer, 140 U. S. at p. 557,** quoting the **License Cases, p. 599,** says:

"The law and the decision apply equally to foreign and domestic spirits, as they must do on the principle assumed in support of the law. The assumption is that the police power was not touched by the Constitution but left to the States as the Constitution found it. This is admitted; and whenever a thing from character or condition is of a description to be regulated by the power in the State, then the regulation may be made by the State and Congress cannot interfere. But this must always depend upon facts subject to legal ascertainment, so that the injured may have redress. And the fact must find its support in this, whether the prohibited article belongs to and is subject to be regulated as a part of foreign commerce or of commerce among the States. **If from its nature it does not belong to commerce, or if its condition from putrescence or other cause**

is such when it is about to enter the State that it no longer belongs to commerce, or in other words is not a commercial article, then the State power may exclude its introduction. And as an incident to this power, the State may use means to ascertain the fact, and here is the limit between the sovereign power of the State and the Federal power; **that is to say, that which does not belong to commerce is within the jurisdiction of the police power of the State; and that which does belong to commerce is within the jurisdiction of the United States.** And to this limit must all the general views come that were suggested in the reasoning of the court in the cases of **Gibbons vs. Ogden; Brown vs. Maryland; and New York vs. Miln.**"

But it is quite different with property the subject of daily commercial transactions, as well as with persons not affected with disease or tainted with crime; they are legitimate subjects of interstate and foreign commerce, and their transportation and travel from State to State and from foreign countries are under the protection of the Constitution and cannot be restrained save by Congress itself.

In **Leisy vs. Hardin, 135 U. S. at p. 125,** where the question was whether, it being the public policy of the State of Iowa to prohibit the manufacture and sale of intoxicating liquors within the border of that State, it could prohibit the transportation into its borders from another State, and the sale there in the original package, of such intoxicating liquors, this Court, through Mr. Chief Justice Fuller, said:

"Whatever our individual views may be as to the deleterious or dangerous qualities of particular articles, we cannot hold that any articles which Congress recognizes as subjects of interstate commerce are not such, or that whatever are thus recognized can be controlled by any State laws amounting to regulations while they retain their character, although at the same time, if directly dangerous

in themselves, the State may take appropriate measures to guard against injury before it obtains complete jurisdiction over them. To concede to a State the power to exclude, directly or indirectly, articles so situated without Congressional permission, is to concede to a majority of the people of a State represented in the State Legislature the power to regulate commercial intercourse between the States by determining what shall be its subjects, when that power was distinctly granted to be exercised by the people of the United States represented in Congress, and its possession by the latter was considered essential to that more perfect union which the Constitution was adopted to create."

Mr. Justice Matthews, in **Bowman vs. Ry. Co., 125 U. S. at p. 489**, said, in reference to a statute of Iowa having as its purpose the prohibition of importation of spiritous liquors into the State, as follows:

"It has never been regarded as within the legitimate scope of inspection laws to prohibit trade in respect to any known article of commerce, irrespective of its condition and quality, merely on account of its intrinsic nature and the injurious consequences of its use or abuse.

"For similar reasons, the statute of Iowa under consideration cannot be regarded as a regulation of quarantine or a sanitary provision for the purpose of protecting the physical health of the community, or a law to prevent the introduction into the State of disease, contagious, infectious or otherwise. Doubtless, the States have the power to provide by law suitable measures to prevent the introduction into the States of articles of trade which on account of their existing condition would bring in and spread disease, pestilence, and death, such as rags or other substances infected with the germs of yellow fever or the virus of small pox, or cattle or meat or other provisions that are diseased or decayed, or otherwise, from their condition and quality, unfit for human use or consumption. Such articles are not merchantable; they are not legitimate subjects of trade and commerce. They may be rightly outlawed as intrinsi-

cally and directly the immediate sources and causes of destruction to human health and life. The self-protecting power of each State, therefore, may be rightfully exerted against their introduction, and such exercise of power cannot be considered regulations of commerce prohibited by the Constitution."

The learned Justice then quotes with approval the observations of Mr. Justice Catron in the **License Cases, supra.** He then proceeds (p. 498) as follows:

"The section of the statute of Iowa, the validity of which is drawn in question in this case, does not fall within our enumeration of the legitimate exertions of the police power. It is not an exercise of the jurisdiction of the State over persons and property within its limits. On the contrary, it is an attempt to exert that jurisdiction over persons and property within the limits of other States. It seeks to prohibit and stop their passage and importation into its own limits, and is designed as a regulation for the conduct of commerce before the merchandise is brought to its border. It is not one of those local regulations designed to aid and facilitate commerce; it is not an inspection law to secure the due quality and measure of a commodity; it is a law to regulate or restrict the sale of an article deemed injurious to the health and morals of the community; it is not a regulation confined to the purely internal and domestic commerce of the State; it is not a restriction which only operates upon property after it has become mingled with, and forms part of the mass of the property within the State. It is, on the other hand, a regulation directly affecting interstate commerce in an essential and vital point. If authorized in the present instance upon the grounds and motives of the policy which has dictated it, the very reason would justify any and every other State regulation of interstate commerce upon any grounds and reasons which might prompt in particular cases their adoption. It is, therefore, a regulation of that character which constitutes an unauthorized

interference with the power given to Congress over the subject."

In **Minnesota vs. Barber, 136 U. S. 313,** the Court had occasion to consider a statute of Minnesota, requiring that cattle, sheep and swine designed for slaughter for human food shall be inspected in that State before being slaughtered, and held same to be unconstitutional, as in effect prohibiting the importation into that State of all fresh beef, mutton or pork, although entirely sound, healthy and fit for human food. Mr. Justice Harland, in delivering the opinion of the Court (p. 328), said:

"But a law providing for the inspection of animals whose meats are designed for human food cannot be regarded as a rightful exertion of the police powers of the State, if the inspection prescribed is of such a character or is burdened with such conditions as will prevent altogether the introduction into the State of sound meats, the products of animals slaughtered in other States. It is one thing for a State to exclude from its limits cattle, sheep, or swine actually diseased, or meats that, by reason of their condition, or the condition of the animals from which they are taken, are unfit for human food, and punish all sales of such animals or of such meats within its limits. It is quite a different thing for a State to declare, as did Minnesota by the necessary operation of its statute, that fresh beef, veal, mutton, lamb, or pork, articles that are used in every part of this country to support human life, shall not be sold at all for human food within its limits, unless the animals from which such meats are taken are inspected in that State, or as is practically said, unless the animal is slaughtered in that State."

A case similar in principle to the one at bar came before this Court in **Railway vs. Husen, 95 U. S. 465.** In that case, there was drawn in question the constitutionality of a statute of Missouri, which provided for the exclusion from

Missouri of all cattle coming from Texas during certain months of the year, it being contended that such cattle were liable to be infected with a dangerous infectious disease known as Texas fever. The Court held the statute void for the reason that it made no distinction between healthy cattle and unhealthy cattle coming from Texas. It held that while it would have been competent for the State of Missouri, in the exercise of its police power, to pass quarantine and inspection laws for the purpose of detecting such of the cattle as were diseased, and to exclude such as were so infected, it was a violation of the commerce clause of the Federal Constitution to prohibit the introduction of healthy cattle from that State into Missouri, and that the statute in effect authorized such exclusion, and was therefore void.

An interesting case, involving the right of a State to impose conditions upon the entrance into its borders of persons from other States or foreign countries, was decided by the Supreme Court of Maine in the case of **City of Bangor vs. Smith**, 83 Me. 322. In this case, there was drawn in question the validity of a statute of that State, which provided that any carrier, which brought into the State a person not having a settlement therein, must remove him from the State upon request of the proper officers, if he fell into distress within one year, or should be liable for his support. The defendant had brought from New York into that State on his steamship 56 Italian laborers, who within a year became paupers, and suit was brought to recover the expense of their support by the City. The statute, as applied, was declared by the Supreme Court of Maine to be a regulation

of interstate commerce and void. In the course of its opinion, the Court said:

"But it is claimed that this is the exercise of the police power of the State. That the State in the exercise of its police power may indirectly to some extent affect commerce between foreign countries and the United States or between the States, may be conceded. But what the police power of the State embraces and how far it extends does not appear to have been definitely determined. It may exercise it to require quarantine or inspection before landing persons brought from abroad. It may exercise it to prevent the landing of passengers infected with contagious disease. It may exercise it over the landing of convicted felons from abroad. It may exercise it over persons who have been subjected to contagious diseases, so as to be liable to be infected with it and communicate it to others, and thereby endanger the health of the community. But it cannot exercise it to prevent commerce, nor can it exercise it over the carrying or landing of persons who are not at the time they are brought into the State in a condition to be dangerous to the public. It cannot exercise it over persons who are free from contagion, who have not been subjected to any danger of contagious disease, on the ground that they may become dangerous in that respect within a year or any other fixed period of time after the landing."

A case almost exactly parallel to the case at bar arose in California, and was decided by the Supreme Court of that State in **State vs. Steamship Constitution, 42 Cal. 578.** The statute drawn in question in that case vested in certain officers the exclusion from the State of persons that were affected with disease, or that were criminals, or that were liable to become a public charge. The statute was framed in such broad language that the Court found that it authorized the exclusion of healthy persons not of that description. It was one of the many statutes framed with the in-

tention of excluding Chinese and other aliens, whose presence it was admitted was detrimental to the welfare and the morals of the citizens of the State. In the course of an able opinion, the Court said:

"But whilst conceding the authority of the State to enact police and sanitary regulations for preserving the health and morals of the people, counsel insists that it is neither one or the other so far as it operates upon persons who at the time of landing are neither paupers, vagabonds, or criminals, or affected with any mental or bodily infirmity, but on the contrary are perfectly sound in body and mind and in every way fitted to earn a support. It is said the police and sanitary regulations can have no just application to persons of this description, and that it is an abuse of terms to say that they are proper subjects for such regulations because possibly they may at some future day become paupers, vagabonds, or criminals, or sick, infirm, or otherwise disabled. This view of the question appears to me to be unanswerable. It is a misnomer to call that a police regulation, in the sense in which that term is here applied, in so far as it operates upon persons of good morals and upright character, and who are no more likely than the average of mankind to become paupers, vagabonds, or criminals; and it is equally a misnomer to term that a sanitary regulation which applies only to persons in good health and sound mind, and who are not more liable than other persons hereafter to become a public charge from sickness or infirmity. The power to make police and sanitary regulations, prescribing the terms on which certain classes of persons shall be admitted into this State, necessarily includes the power to exclude them altogether, if they fail to comply with the prescribed conditions. If a criminal from a penal colony should be required to pay $100 upon his entrance into this State, he might be excluded altogether if he refused to pay the required sum; or a pauper from a foreign almshouse might be refused permission to land in this State on any terms, or might be received on any terms the State might prescribe. These

would be merely police regulations in the proper and just sense of that term. But if the State, under pretense of police or health regulations, should enact that no person should hereafter enter this State unless he would first pay a sum of money, or give a bond with sureties for his future good behavior, or conditional that he would not become a public charge during his sojourn in this State, this could in no just sense be termed a police or sanitary regulation, in so far as it would be applicable to persons of good character and morals, and who were sound in body and mind. If the State could exercise such a power as this under the pretense of preserving the public health and morals, it is obvious that it might destroy the entire passenger traffic between this State and foreign countries, and even with our sister States. It might for the same reason prohibit the importation of all merchandise from foreign countries for fear that it might be infected with some secret cause of disease, which in the future might possibly endanger the health of the community. Whilst the Legislature may exercise a wide discretion as to the proper subjects of police and sanitary regulations, and as to the proper mode of preserving health and morals of the community by means of these regulations, it cannot under color of this power enact laws which in no proximate degree are germane to the subject. I am, therefore, of the opinion that a statute which obstructs the entrance into the State of persons who are neither paupers, vagabonds, nor criminals, or in anywise unsound or infirm in body or mind, is not a valid exercise of the police power of the State in any just sense of the word."

To the same effect, see **Scott vs. Donald, 165 U. S. 58; In re Schollenberger, 171 U. S. 1; Henderson vs. Mayor, 92 U. S. 259.**

In the case at bar, it is not pretended that these persons were infected with any disease that was liable to be communicated to the community, or that they were paupers or criminals, but on the contrary each and all of them had ad-

mittedly come from a healthy port, had remained in good health on the voyage, and when inspected and examined by the officers of the defendant Board at the quarantine station, had been given certificates of good health. In the resolution thereafter directing their exclusion (Trans. pp. 17-18) there is even no intimation or claim that they were not immunes from the disease said to be prevalent, or that they for any reason were more likely than other persons to be afflicted after their arrival, but the action seems to be based solely upon the number of them. Under this resolution, they might all have entered the State singly, but not as a body. But admitting for the sake of the argument that the physicians constituting the Board really believed, for any reason, that these persons, if permitted to land, would be likely to become infected by the disease alleged to exist in the State, and thus possibly cause a spread of the disease, nevertheless that would not have justified their exclusion. Being perfectly healthy, they were legitimate subjects of transportation, and under the protection of the Constitution, the plaintiff had the right to bring and disembark them there, free of all restraints except such as the National Government may have prescribed. The State was bound to permit them to enter, and could not justly have excluded them upon the theory that possibly at some future time their presence might prove injurious to its citizens. The State's remedy was not in excluding them, but in enforcing, after they ceased being subjects of international commerce, and had become subject to its jurisdiction, such sanitary rules and regulations in regard to them as seemed best. The fact that the State did not see fit to undertake

this task, or that it could or would not enforce its sanitary laws after the landing of these people is no defense for attempting to deny them rights secured under the supreme law of the land. If the State or its officers believe that a person, whose character is such that his right to enter its borders is guaranteed by the Constitution, will, for any reason, thereafter become dangerous to public health, morals or order by a disregard of its police or sanitary laws, such tendency could be readily checked by a proper enforcement of its laws. To permit the exclusion of any person then unobjectionable, upon the ground that, in the opinion or judgment of some official or officials, he might possibly contract at some future day some disease and thereby spread it among the community, or that he would become vicious and thereafter injure public morals or affect the public safety, would open the door to all sorts of oppression.

In the case of **Ah Fong, 3 Sawyer, 144 (1 Fed. Cases 213)**, decided on Circuit by **Mr. Justice Field,** and subsequently followed by the Supreme Court in **Chy Lung vs. Freeman, 92 U. S. 275,** a statute of California, directed to the exclusion of Chinese from that State, was passed upon. It was contended in support of the validity of the law that the Chinese were of such low moral character, opposed to our system of government, unwilling to adapt themselves to our laws, criminals by nature, and generally dangerous to the public health and morals of our citizens, that the State, therefore, in the exercise of its police power, had the right to exclude such persons from its borders. But the learned Justice said:

"But the extent of the power of the State to exclude a

foreigner from its territory is limited by the right in which it has its origin, the right of self-defense. Whatever outside of the legitimate exercise of this right affects the intercourse of foreigners with our people, their immigration to this country and residence therein is exclusively within the jurisdiction of the general government, and is not subject to State control or interference. To that government the treaty-making power is confided; also, the power to regulate commerce with foreign nations, which includes intercourse with them as well as traffic; also the power to prescribe the conditions of migration or importation of persons, and rules of naturalization; whilst the States are forbidden to enter into any treaty, alliance, or confederation with other nations.

"I am aware that the right of the State to exclude from its limits any persons whom it may deem dangerous or injurious to the interests and welfare of its citizens has been asserted by eminent judges of the Supreme Court of the United States. Mr. Chief Justice Taney maintained the existence of this right in his dissenting opinion in the Passenger Cases, and asserted that the power had been recognized in previous decisions of the Court. The language of the opinion in the case of the **City of New York vs. Miln, 11 Pet. (36 U. S.) 141,** would seem to sustain this doctrine. But neither in the **Passenger Cases** nor in the case of the **City of New York vs. Miln,** did the decision of the Court require any consideration of the power of exclusion, which the State possessed; and all that was said by the eminent judges in those cases upon that subject was argumentative and not necessary and authoritative.

"But independent of this consideration, we cannot shut our eyes to the fact that much which was formerly said upon the power of the State in this respect, grew out of the necessity which the Southern States, in which the institution of slavery existed, felt of excluding free negroes from their limits. As in some States negroes were citizens, the right to exclude them from the slave States could only be maintained by the assertion of a power to exclude all persons whom they might deem dangerous or injurious to

their interests. But at this day no such power would be asserted, or, if asserted, allowed, in any Federal court. And the most serious consequences affecting the relations of the nation with other countries might, and undoubtedly would, follow from any attempt at its exercise. Its maintenance would enable any State to involve the nation in war, however disposed to peace the people at large might be.

"Where the evil apprehended by the State from the ingress of foreigners is, that such foreigners will disregard the laws of the State, and thus be injurious to its peace, the remedy lies in the more vigorous enforcement of the laws, not in the exclusion of the parties. Gambling is considered by most States to be injurious to the morals of their people, and is made a public offense. It would hardly be considered as a legitimate exercise of the police power of the States to prevent a foreigner who had been a gambler in his own country from landing in ours. If, after landing, he pursues his former occupation, fine him, and if he persists in it imprison him, and the evil will be remedied. In some States the manufacture and sale of spirituous and intoxicating liquors are forbidden and punished as a misdemeanor. If the foreigner coming to our shore is a manufacturer or dealer in such liquors, it would be deemed an illegitimate exercise of the police power to exclude him, on account of his calling, from the State. The remedy against any apprehended manufacture and sale would lie in such case in the enforcement of the penal laws of the State. So if lewd women, or lewd men, even if the latter be of that baser sort, who, when Paul preached at Thessalonica, set all the city in an uproar (Acts xvii, verse 5), land on our shores, the remedy against any subsequent lewd conduct on their part must be found in good laws or good municipal regulations and a vigorous police. It is evident that if the possible violation of the laws of the State by an immigrant, or the supposed immorality of his past life or profession, where that immorality has not already resulted in a conviction for a felony, is to determine his right to land and to reside in the State, or to pass through other and interior States, a door will be open to all sorts of op-

pression. The doctrine now asserted by counsel for the commissioner of immigration, if maintained, would certainly be invoked, and at no distant day, when other parties besides low and despised Chinese women, are the subjects of its application, and would then be seen to be a grievous departure from principle."

If the construction of this statute by the Supreme Court of Louisiana is correct, then the power to act as they did was surely vested by the State in the Board of Health. This statute is a most remarkable one, and certainly, if valid, a most unusual extension of the police power. As we have seen, by its terms, the State Board of Health has the jurisdiction and power to declare: (1) what are infectious or contagious diseases; (2) what shall constitute infection; (3) what extent of territory is infected; (4) what extent of territory shall be quarantined or closed to intercourse; (5) what shall be the duration of such non-intercourse; and (6) what persons may or may not be permitted to enter such infected territory.

Being a special tribunal for the determination of these questions, and being vested with absolute discretion, their findings would not be subject to review.

Nishi Mura vs. United States, 142 U. S. 660.

Martin vs. Mott, 12 Wheat. 21.

Philadelphia vs. Stimpson, 14 Pet. 458.

In re Oteiza, 136 U. S. 330.

Hellon vs. Merritt, 110 U. S. 97.

Benson vs. McMahon, 127 U. S. 457.

How many contagious or infectious diseases there are, we are unable to say, but they vary in virulence from bubonic plague to measles and mumps and grippe. To each of these extensive classes of diseases, certain classes of

people are more susceptible than others. Some one or more of these diseases are always prevalent in different communities in this State. So that under the authority given this Board by the State, it could declare that the whole or any part of the State was infected with one or more such diseases, and that in its opinion the introduction of persons from places above certain degrees of latitude would tend to spread the disease, and thereupon prevent intercourse with all States or countries beyond that parallel. To illustrate further. Your Honors are, no doubt, aware that it is claimed that there never has been any yellow fever in Texas for a great many years, due to its excellent quarantine system, so that it is plain the people of Texas are not immunes; whereas, there have been frequent occurrences of fever of late in Louisiana and Mississippi, in fact by some it is claimed that the disease is endemic in this State, so that most of the people in the latter States are immunes. On the occurrence of the fever in New Orleans, the Board of Health could promply declare it infected, and state that in its judgment none but immunes should be allowed to enter the city. As the citizens of Texas are not immunes, and the citizens of Mississippi are, an embargo is placed on the former while intercourse is unrestricted as to the latter. If, therefore, it became the policy of Louisiana to cease intercourse with any State, it would have in its Board of Health a ready and powerful mechanism with which to accomplish that end.

It is well known that of late years Italian immigration has been exceedingly heavy into Louisiana. By many Italians are considered an undesirable class of citizens. If

at any time public sentiment became strong in that belief so that it became the policy of the State to stop that immigration, just as it became the policy of California in reference to Chinese, it would be an easy matter to put an end to it through the action of the Board of Health in declaring that various infectious and contagious diseases existed, and that the presence of these unacclimated foreigners would tend to spread them in the community. Small-pox is a disease to which negroes are particularly susceptible. It prevails to-day among them throughout the State, and under its alleged powers, this Board could prohibit anyone of negro blood from entering the State on the theory it would be "adding fuel to the flame."

In this case the State Courts, as well as the other State authorities, were misled by a metaphor. Their general idea was that there was illness in New Orleans and that the importation of healthy people from a healthy foreign port "would add fuel to the flame." Inspired by this figure of rhetoric, they concluded that the police power of the State of Louisiana would justify the interference with international commerce, as shown by this record. It seems to us that such reasoning is dangerous and fallacious. If pushed to its logical extent it easily leads to the *reductio ad absurdum*. We will all agree that the police power extends to the protection of the morals as well as the health of the community which is within the sphere of its jurisdiction. Now, there can be no doubt that a certain amount of vice is found in the City of New Orleans. We do not claim a larger share than Chicago, for example, in proportion to our population, but everyone will admit that there is a large amount of immorality in our City, and that the police

power of the State and of the municipality may be exercised to reduce and if possible to extirpate vice and crime and disorder. But, suppose the State of Louisiana, through its legislative, executive and judicial departments, should declare that, in order to effect this worthy object, it was necessary to forbid the transportation of any more passengers from any European port to our City. Let us further suppose a European city of a highly moral character concerning which nothing could be said against the principles or habits of its people; and let us suppose a steamship coming to New Orleans from that highly moral foreign port with a number of passengers of excellent moral character. Let us further suppose this steamship was stopped at the mouth of the Mississippi and gravely told by the State authorities that the advent of the passengers she was carrying "would add fuel to the flame;" that as soon as these virtuous people should be landed in our City they would become demoralized, they would enter upon a career of wild dissipation and debauchery; and that, therefore, the local authorities had a perfect right to put a stop to international commerce of this kind.

It might be further supposed that the authorities at New Orleans under the same conditions might arrest and send away a party of theological students coming by steamship from New York, and thus interfere with interstate transportation of passengers, upon the pretext that the guileless youths might become demoralized by the frivolities of our City and add fuel to the flame of vice which is constantly burning in our slums. Is it not thus plain that we arrive at the *reductio ad absurdum*?

Passenger Cases, 7 How., at page 407.

It is no answer to say that this statute operates equally upon all persons, resident as well as non-resident (Mr. Justice Harlan in **Minnesota vs. Barber, 136 U. S. 326**, citing **Robbins vs. Shelby Taxing District, 120 U. S. 489; State Freight Tax, 15 Wall. 232**), or that the Board will not abuse the wide authority given them by the statute. It is a conclusive presumption that when authority is conferred it will be exercised to its full limit; it was conferred for no other purpose than to be exercised at the discretion of the Board. It is idle to say that officials clothed with this arbitrary and unrestricted authority will not abuse it, or that the material interests of the State will prevent it being used oppressively. In the language of Mr. Justice Field in **Gloucester vs. Pennsylvania, 114 U. S. at pages 205-6**:

"Those engaged in foreign and interstate commerce are not bound to trust to its (the State's) moderation in that respect; they require security. And they may rely on the power of Congress to prevent any interference by the State until the act of commerce, the transportation of passengers and freight, is complete."

It is a canon of construction in testing the constitutionality of a statute that its natural and reasonable effect should be regarded (**Chy Lung vs. Freeman, 92 U. S. 279; Railway vs. Husen, 95 U. S. 465**), and so tested the effect of this statute is to vest three of a board of seven physicians with unrestrained power and discretion to determine how, when and where, citizens of other States, and foreigners, untainted by disease or crime, may enter the State of Louisiana. It attempts to give them an authority which can only be exercised by Congress.

The statute in question in this case is in many respects similar to the one considered in **Chy Lung vs. Freeman, 92**

U. S. 275. In that case the statute authorized the Commissioner of Immigration to satisfy himself whether or not any passenger, who should arrive from any foreign port, was insane, deaf, dumb, blind, a convicted criminal, or a lewd or debauched woman, etc., and any persons found to belong to these classes should be excluded, unless a bond be given by the master of the ship to secure their support or good behavior, etc. The Court declared it a most extraordinary statute (p. 277), placing, as it did, the power in the hands of the Commissioner to prevent entirely vessels engaged in a foreign trade from carrying passengers, by enabling him simply to declare a ship's passengers to be of the prohibited classes, and thereupon to require the master to give bonds for them all. This statute did not in terms authorize the Commissioner to exclude such persons as he might decide to belong to the prohibited classes, as the statute in this case does, but the power to impose conditions on admission implies a power to exclude, and the Court found no difficulty in that such statute vested the officer with power to interfere with foreign commerce, and held it void.

How much more forcibly the reasoning of the Court in that case applies to the facts in the instant one, when the power of exclusion of healthy persons coming from healthy countries is expressly conferred?

V.

SECOND POINT.

That portion of Section 8 of Act 192 of the General Assembly of Louisiana of 1898, relied on by the defendants in error, is void on its face, and void as construed by the Supreme Court of Louisiana, and as applied by the said defend-

ants in error herein. On its face it contains a grant of power that is illegal; and as construed and applied it is operated to deprive the plaintiff in error of its liberty and property without due process of law and to deny it the equal protection of the laws in contravention of Section 1 of the 14th Article of Amendment of the Constitution of the United States.

We may first properly dispose of certain preliminary questions before discussing the merits of the foregoing proposition.

(*a*) There can be no doubt as to the power of this Court to entertain and decide the issue whether the rights of the plaintiff in error under the 14th Amendment had been invaded or infringed. In the Assignment of Errors filed in the Supreme Court of Louisiana before hearing and decision, it was insisted that the judgment of the lower court had denied the rights of the plaintiff in error under the said Amendment; and the merits of this contention the Supreme Court of Louisiana considered and denied, saying that the contention was "utterly untenable." (Record, page 25). **Oxley Stave Co. vs. Butler County, 166 U. S., pages 648 and 656, and authorities cited; Chicago & N. W. Ry. Co. vs. Chicago, 164 U. S. 454-457; Manell vs. Newbold, 18 How. 511.**

(*b*) There is equally little doubt that the plaintiff in error is a **person** within the meaning and scope of the 14th Amendment.

"It is now settled that corporations are persons within the meaning of the constitutional provisions forbidding the deprivation of property without due process of law as well as a denial of the equal protection of the laws." **Covington Turnpike Co. vs. Sanford, 164 U. S. 578-592; Santa Clara Co. vs. Southern Pacific R. R. Co., 118 U. S. 394.**

"The rights and securities granted to persons by that instrument cannot be disregarded in respect to those artificial entities, called corporations, any more than they are in respect to the individuals, who are the equitable owners of the property belonging to such corporations. A State has no more power to deny to corporations the equal protection of the laws than it has to the individual citizen." **Santa Fe Ry. Co. vs. Ellis, 165 U. S. 150 and 154; Allgeyer vs. La., 165 U. S. 578; Pembina Mining Co. vs. Penn, 119 U. S. 110, 119.**

(c) It is further settled that the word person includes an alien and that the amendment entitles him to protection of liberty and property. **Yick Wo vs. Hopkins, 118 U. S. 356; Re Hoover, 30 Federal Reporter, 51; Re Tiburcio Parrott, 1 Federal Reporter, 481, 497; U. S. vs. Wong Dep Ken, 57 Fed. Rep. 206; Ah Kow vs. Nunan, 5 Sawyer, 552; Ah Fong, 3 Sawyer, 154, 157.**

(d) It, therefore, follows that the plaintiff in error is a person within the meaning of the constitutional provisions.

(e) It is further clear that the plaintiff in error is not only within that category of the amendment which forbids any State to "deprive any person of life, liberty, or property without due process of law;" but also within that category which forbids any State to "deny to any person within its jurisdiction the equal protection of the laws." Act 149 of the General Assembly of Louisiana of 1890 (Appendix B) provides that all corporations domiciled outside of the State, except mercantile corporations, shall file with the Secretary of State a declaration of domicile, and shall designate an agent upon whom service of legal process shall be made; and that service of process on such agent shall suffice to bring the corporation into court.

It appears from the petitions in this case and the exception admits that the plaintiff in error is doing a non-mercantile business in the State of Louisiana, and that Sawers & Sons are, for the purposes of its business, its agents in the City of New Orleans. It is a fact, and the Court will presume, that the plaintiff in error has complied with the statute above mentioned, and that it is pursuing its said business under the license, and with the permission of the State; and therefore no suggestion can lie that the plaintiff in error is not "within the jurisdiction" of the State of Louisiana so as to be entitled to the equal protection of its laws.

(*f*) The right of the plaintiff in error to freely enter the Port of New Orleans with its ships, and to lawfully trade there free of damaging and arbitrary interference by the State of Louisiana or any agency thereof, is granted alike by the Constitution, the treaty of the United States with France and the legislation of Congress. **U. S. Revised Statutes, Secs. 1977 and 709.**

This right is property under every definition of that term, and its deprivation or curtailment constitutes a taking of property and an infringement of liberty.

"The 14th Amendment * * * undoubtedly intended that there should be no arbitrary deprivation of life or liberty, or the arbitrary spoliation of property, but that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights; that all persons should be equally entitled to pursue their happiness and to acquire and enjoy property; that they should have like access to the Courts of the Country for the protection of their persons and property, the prevention and redress of wrongs, and the enforcement of contracts; that no impediment should be interposed to the

pursuits of anyone except as applied to the same pursuits of others under like circumstances; that no greater burdens should be laid upon one than are laid upon others in the same calling and condition." **Barbier vs. Connolly, 113 U. S. 27, 31.**

"The main guarantee of private rights against unjust legislation is found in that memorable clause of the Bill of Rights, that no man shall be deprived of life, liberty or property, without due process of law. This guaranty is not construed in any narrow or technical sense. The right to life may be invaded without its destruction. One may be deprived of his liberty in a constitutional sense without putting his body in confinement. Property may be taken without manual interference therewith, or its physical destruction." **Bertholf vs. O'Reilly, 74 N. Y. 509, Tiedeman Lims. Police Power, Sec. 3.**

The deprivation and taking are admitted, and the sole question is, whether such deprivation and taking were lawful.

(*g*) We need not go far afield to seek either the history and reasons which preceded and led to the adoption of the provision which we attack, or the extent of the power intended to be conferred thereby. The former is conveniently afforded, and the latter defined in strict harmony with the legislative intention, by the opinion of the Supreme Court of Louisiana. Speaking of the Board, defendant in error here, and the power conferred by **Section 8 of Act 192 of 1898,** the Court says:

"It is very clear that the General Assembly intended to grant additional powers to the Board, and this very power was, beyond question, one of them.

"During the fall of 1897, and during the existence of an epidemic, a vessel arrived in the Mississippi River with immigrants aboard, under conditions similar to those under which the Britannia reached the same stream in 1898.

"The excited public discussion at the time as to the right of the State Board under the then existing law to prevent the landing of the immigrants, and as to its duty in the premises, was so extended as to authorize us to take judicial notice of the fact, and in our opinion the clause in the present Act, which covers that precise matter, was inserted therein for the express purpose of placing the particular question outside of the circumstances of controversy.

"For a number of years past, immigrants had been coming into New Orleans in the autumn from Italy.

"There was a probability, when the General Assembly met in 1898, that the epidemic of 1897 might be repeated and a great probability that immigrants would seek to enter as they had done the year before, to the great danger, not only of the people of Louisiana, but of the immigrants themselves.

"Independently of this, there was great danger to be apprehended from the increasing intercourse between New Orleans and the West India Islands in consequence of a war with Spain.

"It was to ward off these dangers that this particular provision was inserted in the Act of 1898."

This language contains the gist of the matter. The State Board of Health is to have power, and unlimited power, to prohibit the entrance into or through the State of Louisiana of any person or bodies of persons whatsoever on the theory that the entrance or passage of such persons would be (to use the phrase of the Supreme Court of Louisiana) the addition of new "fuel to the flame" of any disease, previously declared by the Board to exist and to be of the character designated as infectious or contagious.

Italian immigration in the fall of the year, however lawful under the existing treaties, is to be the especial object of prevention and was the especial object of prevention in the case at bar.

We think it demonstrable both by reason and authority that this grant of power is void on its face. And if it is void, the defendants are liable, for they have never pretended to act under any other.

By the provisions of Act 192 of 1898, the State Board of Health is given the power to declare the existence of infectious or contagious diseases in any portion of the State, and then to declare the same in quarantine. What diseases shall be considered infectious or contagious, and to what extent a particular disease must prevail to warrant action on the part of the Board, are matters necessarily and properly left to the discretion of the Board itself. The exercise of this discretion to the extent above indicated could not, and would not be reviewed by any tribunal. If measles, in the opinion of the Board, was an infectious and contagious disease, it is not likely that any court would undertake to say that it was not.

So far, the statute is unobjectionable. But having first exercised its discretion in declaring the existence and nature of some disease and having declared "a portion of the State" to be infected with such disease, what limit is there upon the power of the Board? We submit there is none.

It cannot be denied that the phrase, "persons acclimated, unacclimated or said to be immune," is exhaustive. There is no human being who is not embraced by it; prince, pauper, citizen, alien, healthy, diseased, old, young, from whatever spot on the globe, seeking entrance into Louisiana under whatever circumstances and for whatever purpose, each, any or all may be met with the Board's prohibition of entrance. It is not the mere residence of a healthy person in some narrowly defined infected locality that may

be thus prohibited. It is his "introduction" into an undefined infected locality for whatever purpose, whether as a traveler desiring mere passage, or a trader the mere time to transact his business and depart. Again, this introduction is made to depend in nowise upon the likelihood of danger. If the Board has declared the City of New Orleans to be infected by reason of the existence of five cases of yellow fever in the lower portion of the City, a passenger from Europe may not disembark ten miles away in the upper portion for the purpose of taking a train to Washington or Kansas City. He is paternally considered "fresh fuel" and not allowed to risk himself. On the same theory, if a tenement on the outskirts of the City should take fire, the delivery of a fifty pound package of gunpowder in another portion five miles away may be forbidden. The danger is no more remote in the one case than in the other.

And why, after all, may not a healthy person who desires to do so, take his chances of contracting a disease some of which prevails in a locality of large dimensions? What injustice is done to the rest of the community?

Surely, no more than is done every day in the course of nature by the birth of children in that locality. These children are "fresh fuel" and peculiarly liable to add to the "flame;" and yet the wildest germicide would not dream of proposing to isolate them or take them away from their parents. Every citizen of Louisiana who returned from West, East, or North, from Boston, Chicago, Paris, or Hong Kong, and came to New Orleans in the fall of 1898, was "fresh fuel." Every train that entered the city in that fall brought "fresh fuel." It is not pretended, and the contrary is

alleged, that this "fresh fuel" was stopped by the Board of Health, defendants in error here. Its failure to do this subjected the plaintiff in error to a gross and oppressive discrimination. But the question now in hand is, could the entry of all this "fresh fuel" have been lawfully prevented?

The proposition of the defendants in error really comes to this: that instead of being limited to the isolation of those persons who are found to have or are suspected of having disease, they have and should have the power to isolate the rest of the healthy world from any territory over or in which they may allow such cases of disease to remain scattered.

Instead of setting apart any ten or fifty patients that may be discovered with fever in New Orleans in a special portion of the City or elsewhere—in other words, instead of prescribing reasonable regulations governing intercourse with disease actually discovered—the ten or fifty cases are to remain wherever the stricken persons may be, and everyone else, no matter what his health, is to be excluded from all portions of the City because perchance someone may contract the disease, and then pass it on to a citizen who has been daily exposed to the same or greater danger, according to his discretion, his state of health, whether he has met this person or that, been here or there—according to an infinite number of circumstances.

To sum up, the Board has an uncontrolled power and an unreviewable discretion to pronounce at any time, and prolong for any period the existence of any disease, and to stamp it with the character of infectious or contagious; it may declare and determine at will the extent of the territory in

which such disease exists at any time without limitation and without respect to the facts; it may select any person or persons whatsoever as likely to increase the prevalence of the disease, and prohibit his or their entrance without regard to the health of those persons, or the health of the places from which they come, or the likelihood or unlikelihood of their being diseased, and it may then deny to the person or persons so selected any entrance into, or passage through, the portions of the State previously declared to be infected.

This is power absolute, imperial, transcending all law. It will not do to say that the condition precedent to the exercise of the power of the Board is the existence of an infectious or contagious disease in some portion of the State. The creation of this condition precedent to the exercise of its power of exclusion depends wholly on the will of the Board itself. It may say to-day that an infectious disease exists in a certain locality, and thereupon exercise against A its power of exclusion, and to-morrow it may say that the disease no longer exists in that locality, and thereupon permit B to enter. How little the Board would hesitate in the future to create and declare this condition in order to give room for any desired action on its part may be judged by the facts of the present case.

Subsequent to the passage of the resolution attached to the original petition of the plaintiff in error and the notice thereof, the agents of said plaintiff in error at New Orleans were notified that if they attempted to land the Britannia's passengers at any place in the State of Louisiana, quarantine would at once be established and enforced there. It was not pretended, and it was not a fact, that the whole

State was infected; but the Board desired to exclude immigration from Italy in the fall of 1898. The power to exclude had been given it, and it exercised that power to the fullest and most oppressive extent. It made no difference that the end to be attained was to be attained by the declaration of a non-existent fact. The statute put this in the power of the Board, and it used its power.

It is well settled in this Court that the effect of a State statute may be considered in testing its constitutionality, and "if deductions from the face of the ordinance as to its necessary tendency and ultimate actual operation" (**Mr. Justice Matthews, in Yick Wo vs. Hopkins, 118 U. S., at page 373**), results in a conclusion of unconstitutionality, then it seems such unconstitutionality may be declared. **Yick Wo vs. Hopkins, 118 U. S. 356; Chy Lung vs. Freeman, 92 U. S. 279; Henderson vs. Mayor, 92 U. S. 268; City of Baltimore vs. Radecke, 49 Md. 217.**

"The necessary tendency and ultimate actual operation" of the statute at bar, quite apart from the facts of this case, are easy to detect. The State of Louisiana has created in its State Board of Health a machinery perfectly adapted to set at naught the Constitution, laws and treaties of the United States, and to put at the mercy of individual caprice the most sacred rights of the individual. Under the guise of police regulation, the State, through this Board, may dictate a separate commercial policy and may regulate immigration into its borders at pleasure. The Board may discriminate against the ships or subjects of any State or Kingdom, or against the ships of any corporation or individual. It may say to 100 British subjects: An epidemic of grippe prevails in the Port of New Orleans.

You shall not come in. It may say this to one British subject and allow 99 others to enter. It may create, at will, occasions for the exclusion of all British subjects, whatsoever, and have no such occasion when the entrance of French subjects is at issue. It may select any person or any steamship or railway line for ruin and any other for enrichment. There is not a conceivable right that may not be infringed, invaded or destroyed by such a power. It is not enough to say that the evil use of the power granted is improbable. No one is bound to trust that an illegal power will be legally and moderately used. **Gloucester Ferry Co. vs. Penn., 114 U. S. 205; Henderson vs. Mayor, 92 U. S. 268.** Power granted must be presumed to be granted for use, and what instance can be pointed to where arbitrary power was slow to exert itself? The history of civil liberty is the history of mankind's attempts to so limit and define power by written laws, charters, and constitutions, that every man may know what rights he has and what duties he owes. If arbitrary power be given, it is not law, for "law is the definition and limitation of power" (**Mr. Justice Matthews, in Yick Wo vs. Hopkins, 118 U. S., at page 370**); and if the power so given be exercised, there is no due process of law, neither is there equal protection of the laws afforded, for there can be no equality of operation in a law which furnishes no rule of action save such as may reside in the will of the individual charged with its execution.

If the "necessary tendency and ultimate actual operation" of the statute here attacked be such as we have argued, no citation, or certainly no extended citation, of authority can be necessary to demonstrate its entire in-

validity. The case at bar cannot be distinguished from the cases of **Chy Lung vs. Freeman, 92 U. S. 277, and Henderson vs. Mayor, 92 U. S. 259.**

We, therefore, submit that that portion of the statute under which the defendants in error acted is void on its face, and is void as construed by the Supreme Court of Louisiana; and that, as applied by the defendants in error, it has subjected the plaintiff in error to an arbitrary taking, and invasion of its rights, and an oppressive discrimination, and has deprived it of the rights secured to it by the 14th Article of Amendment.

VI.

THIRD POINT.

The statute as applied and construed is void, for the reason that it is in conflict with treaties between the United States on the one part and the Republic of France and the Kingdom of Italy on the other parts, guaranteeing certain rights, privileges and immunities to the citizens and subjects of said countries.

Article VIII of the treaty between the United States and France, concluded April 30, 1803 (see "Official Compilations of Treaties in Force, 1899," page 177), whereby the Territory of Louisiana was ceded to the United States, provides:

"In future and forever after the expiration of the twelve years, the ships of France shall be treated upon the footing of the most favored nation in the ports above mentioned" (that is to say, the ports in the ceded territory, including the port of New Orleans).

Articles I, II, III and IV of the treaty of commerce and navigation between the United States and the Kingdom of

Italy, concluded February 26, 1871 (Off. Comp., pages 310, 311), provide as follows:

"Article I. There shall be between the territories of the high contracting parties a reciprocal liberty of commerce and navigation.

"Italian citizens in the United States and citizens of the United States in Italy shall mutually have liberty to enter with their ships and cargoes all the ports of the United States and Italy respectively which may be open to foreign commerce.

"They shall also have liberty to sojourn and reside in all ports whatsoever of said Territories. They shall enjoy respectively within the States and possessions of either party the same rights, privileges, favors, immunities and exemptions for their commerce and navigation as the natives of the country wherein they reside without paying other or higher duties or charges than are paid by the natives on condition of their submitting to the laws and ordinances there prevailing.

"War vessels of the two countries shall receive in their respective ports the treatment of those of the most favored nation.

"Article II. The citizens of each of the high contracting parties shall have liberty to travel in the States and Territories of the other; to carry on trade, wholesale and retail; to hire and occupy houses and warehouses; to employ agents of their choice; and generally to do anything incident to or necessary for trade upon the same terms as the natives of the country submit themselves to the laws there established.

"Article III. The citizens of each of the high contracting parties shall receive in the States and Territories of the other the most constant protection and security for their persons and property, and shall enjoy in this respect the same rights and privileges as are, or shall be, granted to the natives upon their submitting themselves to the conditions imposed upon the natives.

"They shall, however, be exempt in their respective Ter-

ritories from compulsory military service, either on land or sea, in the regular forces or in the national guard or in the militia.

"They shall likewise be exempt from any judicial or municipal office, and from any contribution whatever, in kind or in money, to be levied in compensation for personal service.

"Article IV. The citizens of neither of the contracting parties shall be liable in the States and Territories of the other to any embargo; nor shall they be detained with their vessels, cargoes, merchandise, or effects for any military expedition nor for any public or private purpose whatever, without allowing to those interested a sufficient indemnification previously agreed upon when possible."

Article I of the treaty of commerce and navigation between the United States and Great Britain, concluded July 3, 1815 (Off. Comp., page 216), provides as follows:

"Article 1. There shall be between the Territories of the United States of America and all the Territories of her Britannick Majesty in Europe a reciprocal liberty of commerce. The inhabitants of the two countries respectively shall have liberty freely and securely to come with their ships and cargoes to all such places, ports and rivers in the Territories aforesaid in which other persons are permitted to come; to enter the same and to remain and reside in any port of said Territories respectively; also to hire and occupy houses and warehouses for the purposes of their commerce, and generally the merchants and traders of each nation respectively shall enjoy the most complete protection and security for their commerce; but subject always to the laws and statutes of the two countries respectively."

The treaty of commerce and navigation between the Kingdom of Greece and the United States, concluded Dec. 22, 1837 (Off. Comp. p. 268), provides for reciprocal freedom of trade and intercourse, and the Article XV (p. 273) provides as follows:

"Article XV. It is agreed that vessels arriving directly from the United States of America at a port within the dominion of His Majesty the King of Greece, or from the Kingdom of Greece at a port of the United States of America, and provided with a bill of health granted by an officer having competent power to that effect at the port whence such vessel shall have sailed, setting forth that no malignant or contagious diseases prevailed in that port, shall be subjected to no other quarantine than such as may be necessary for the visit of the health officer of the port where such vessel shall have arrived, after which said vessels shall be allowed immediately to enter and unload their cargoes—Provided always that there shall be on board no person who, during the voyage, shall have been attacked with any malignant or contagious disease; that such vessel shall not, during the passage, have communicated with any vessel liable itself to undergo quarantine; and that the country whence they came shall not at that time be so far infected or suspected that, before their arrival, an ordinance had been issued in consequence of which all vessels coming from that country should be considered as suspected and consequently subject to quarantine."

Article XVI of the treaty of commerce and navigation between the Kingdom of Sweden and Norway and the United States, concluded July 4, 1827 (Off. Comp. 616), contains a provision couched in exactly similar language.

The treaties above quoted are in no proper sense reciprocity treaties, and as the treaty with France quoted above contains the most favored nation clause, each and every one of the stipulations quoted above from the treaties of the United States with Italy, Great Britain, Greece, and Sweden-Norway become a part of the treaty between the United States and the Republic of France, and the citizens of France are entitled to all the privileges and immunities

thereby granted to the same extent as though same were specifically granted in terms by the French treaty.

The right was thus conferred, under the circumstances mentioned in the treaties with Greece and with Sweden-Norway, upon French citizens to come with their vessels to any port in the United States and to discharge the same "with no other quarantine than such as may be necessary for the visit of the health officer of the port where such vessels shall have arrived." The benefit of these treaty stipulations to the orderly and expeditious transaction of commercial affairs, without, however, adding to the risk to the public health, is so evident that it was but natural that Congress should have enacted general legislation along the same lines. And, in fact, it might justly be said that the legislation of Congress, to which we are about to refer, was but legislation to make effective the treaty obligations assumed by the United States in its conventions, for by reason of the fact that most, if not all, of the treaties of this country contain the most favored nation clause, the stipulations in the treaties with Greece and Sweden-Norway became of universal application in the relations of the United States with other nations.

Thus we find that by an Act approved February 15, 1893 (27 Statutes at Large, 449), entitled "An Act granting additional quarantine powers and imposing additional duties upon the Marine Hospital Service," it is by the first section declared unlawful for any merchant ship, or other vessel, from any foreign port or place to enter any port of the United States, except in accordance with the provisions of that act and with such rules and regulations of State and

municipal health authorities as may be made in pursuance of or consistent with that act.

By section 2 of that act it is provided "that any vessel, at any foreign port, clearing for any port or place in the United States, shall be required to obtain from the consul, vice-consul, or other consular officer of the United States, at the port of departure, or from the medical officer where such officer has been detailed by the President for that purpose, a bill of health in duplicate in the form prescribed by the Secretary of the Treasury, setting forth the sanitary history and condition of the vessel and that it has in all respects complied with the rules and regulations in such cases prescribed for securing the best sanitary condition of said vessel with its cargo, passengers, and crew; and said consular or medical officer is required before granting such duplicate bill of health to be satisfied that the matters and things therein stated are true. * * *"

Heavy penalties are imposed by the same section upon any vessel sailing for the United States without this consular bill of health.

By Section 5 it is provided, "* * * and it shall not be lawful for any vessel to enter said port to discharge its cargo or land its passengers except upon a certificate of the health officer at such quarantine station certifying that said rules and regulations have in all respects been observed and complied with as well on his part as on the part of said vessel and its master in respect to the same and to its cargo, passengers and crew; and the master of every such vessel shall produce and deliver to the Collector of Customs at said port of entry, together with the other papers of the vessel, the said bills of health required to be obtained at the port of departure and the certificate herein required to be obtained from the health officer at the port of entry; and that the bills of health herein prescribed shall be considered as part of the ship's papers, and when duly certified to by the proper consular officer or other officer of the United States over his aforesaid signature and seal shall be

accepted as evidence of the statement therein contained in any court of the United States."

Pursuant to the directions of this statute, the Secretary of the Treasury has made elaborate rules and regulations covering the inspection of all vessels with cargo and passengers clearing at a foreign port for a port in the United States; providing for complete reports by consular officers concerning the health of the port from which the vessel is about to sail, the condition of crew, passengers, etc., and prescribing minute regulations for the preservation of the good sanitary condition of the ship and cargo and health of the crew and passengers while at sea. We append to this brief the regulations of the Treasury Department covering the bills of health which such vessels must obtain from the consular agents before sailing, as Appendix "C."

In addition to these regulations, when any of the passengers of the ship are immigrants, by Section 2 of Act approved March 3, 1893, entitled "An act to facilitate the enforcement of the immigration and contract labor laws of the United States" (27 Statutes at Large, 569), it is provided that the immigrants shall be listed in convenient groups and no one list or manifest shall contain more than thirty names. To each immigrant or head of a family shall be given a ticket on which shall be written his name, a number or letter designating the list, and his number on the list for convenience of identification on arrival. Each list or manifest shall be verified by the signature and the oath or affirmation of the master or commanding officer, or of the officer first or second below him in command, taken before the United States Consul or Consular Agent at the

port of departure before the sailing of the vessel, to the effect that he has made a personal examination of each and all of the passengers named therein, and that he has caused the surgeon of said vessel sailing therewith to make a physical examination of each of said passengers, and that from his personal inspection, and the report of said surgeon, he believes that no one of said passengers is an idiot or insane person, or a pauper, or likely to become a public charge, or suffering from a loathsome or dangerous contagious disease, or a person who has been convicted of felony, or of infamous crime or misdemeanor involving moral turpitude, or under a contract or agreement, express or implied, to perform labor in the United States; and that also, according to the best of his knowledge and belief, the information in said list or manifest concerning each of said passengers named therein is correct and true.

The third Section of the same act provides that the surgeon sailing with the vessel shall also sign and make oath to said lists or manifests, stating his professional experience and qualifications as a physician and surgeon, and that he has made a personal examination of each passenger on said lists, and that, according to the best of his knowledge and belief, the statements contained therein are true.

It is plain from an examination of these provisions that a compliance with the requirements of this legislation and the regulations of the Treasury Department made in pursuance thereof satisfies the conditions expressed in the treaties above referred to with Greece and Sweden-Norway and entitles the ship owner to enter and discharge his ship without any other quarantine or detention than such as

may be necessary to permit the health officer to make an examination.

The plaintiff in error specifically alleges in its supplemental and amended petition (Trans. pages 6 and 7) compliance with these laws and regulations, and was, therefore, entitled, after its vessel, cargo, crew and passengers had been inspected by the health officers of the defendant Board and found free of infectious or contagious diseases, to proceed to New Orleans and there discharge her cargo and passengers; and in excluding the Britannia after such inspection had disclosed compliance with said laws and regulations, after the health officer at the Quarantine Station had given her a clean bill of health, the defendants in error deprived the plaintiff in error of privileges and immunities secured to it by and under the treaty with France.

It follows, then, that as the Constitution, and the laws and treaties made in pursuance thereof, are the supreme law of the land, this statute which the Supreme Court of Louisiana holds is a valid exercise of legislative power and vests the State Board of Health with authority to act as they did in this case, must be void, unless for some reason the treaty-making power of the Government exceeded its limitations.

We cannot conceive, however, in what respect it has done so in concluding the treaties referred to above. The power to make treaties is conferred by the Constitution upon the general Government without any express limitations or restrictions whatever. Impliedly, however, it is restricted to securing those objects for which the Government and the Constitution were created, and it cannot be

exercised so as to destroy any of the powers otherwise granted or secured by that instrument.

It might not be so exercised, perhaps, as to deprive the several States of the right of preserving the health and morals of its citizens by excluding convicted felons, paupers, and diseased persons and things from their borders, but beyond this exception in relation to the ingress and egress and the status of foreigners in this country, we know of no limitation upon the treaty-making power conferred by the Constitution.

Mr. Justice Field, in the case of **Ho Ah Kow vs. Nunan, 5 Sawyer, 552,** had occasion to pass upon the validity of certain articles of the Constitution of California and statutes made in pursuance thereof having as their object the exclusion of Chinese. In passing upon the validity of these statutes and in discussing the extent and scope of the treaty-making power, the learned Justice said:

"To that government belongs exclusively the treaty-making power, and the power to regulate commerce with foreign nations, which includes intercourse as well as traffic, and with the exceptions presently mentioned, the power to prescribe the conditions of immigration or importation of persons. The State in these particulars, with those exceptions, is powerless, and nothing is gained by the attempted assertion of a control which can never be admitted. The State may exclude from its limits paupers, and convicts of other countries, persons incurably diseased, and others likely to become a burden upon its resources. It may, perhaps, also exclude persons whose presence would be dangerous to its established government. Whatever is done by way of exclusion beyond this must come from the general Government. That Government alone can determine what aliens shall be permitted to land within the

United States, and upon what conditions they shall be permitted to remain. * * *"

See Baker vs. Portland, 5 Sawy. 566.

In re Parrott, 1 Fed. 481, by Sawyer & Hoffman, J. J.

Nishi Mura vs. United Slates, 142 U. S. 651.

Head Money Cases, 112 U. S. 580.

In re Ah Fong, 3 Sawyer, 144 (Justice Field).

Under the Constitution of the United States, no State has a right to enter into any treaty or convention with any foreign nation, and the power to make treaties and to hold relations with foreign nations is exclusively vested in the Federal Government. As the right of visitation and intercourse by foreigners with this country is within the jurisdiction of the treaty-making power, it follows that the power to fix the conditions upon which foreigners may visit or reside in the United States is vested in the Federal Government; and it follows that whenever the Federal Government in the exercise of its treaty-making power has entered into a convention with any foreign nation fixing the status of the subjects of such nation in the United States and regulating the conditions when and under which they may enter the United States, such treaty becomes obligatory upon all of the States, and it is not within the power of any of them to deny such persons the rights and privileges which such treaty confers upon them. The only limitation we believe to which such rights and privileges so conferred might be subject is the power of the State to protect itself against criminals, paupers, and diseased persons, though it may even be doubted whether the recognized police power of the State could even in such a case prevail. But in this case, it is not necessary to consider

the result of such a conflict, as admittedly, these persons were not of the character mentioned, nor were in their nature any more dangerous to the health and safety of the community than any other class of people. The order and the law excluding them would have applied equally as well to a body of the healthiest and most respectable citizens of any State of the Union or of any foreign nation. It would have applied to any foreign ambassador and his official and personal suite, or to a visiting prince or sovereign just as clearly as to these immigrants.

To permit the exercise of such a power by the State of Louisiana would be to authorize it to nullify every treaty of commerce and navigation made by the general government; to involve it in difficulties which might lead to war or to the suspension of intercourse with foreign nations; and would authorize it to pass laws whose enforcement would render the general government liable to just reclamations which it must answer, while the State, for whose acts it was thus so responsible, would not suffer in any respect whatsoever.

The fulfilment of the most sacred treaty obligations of this government to the nations of the world would be subject to the discretion and judgment of three physicians, a quorum of this Board. Such an assertion of power can never be admitted.

VII.

FOURTH POINT.

This Statute as applied is void for the reason that it is in conflict with the laws of the United States relating to foreign immigration into the United States.

By Acts approved March 3, 1875, Chap. 141; August 3,

1882, Chap. 376; June 26, 1884, Chap. 121; Feb. 26. 1885, Chap. 164; March 23, 1887, Chap. 120; and March 3, 1891, Chap. 551; and the regulations of the Treasury Department made in pursuance thereof, the national government has minutely provided the terms and conditions upon which, and regulated the manner in which, immigrants may enter the United States, and this legislation fully covers the entire field of the subject confided exclusively to the national government. By the Act approved March 3, 1891, Congress has provided for the exclusion of all paupers, criminals, and diseased or afflicted persons, or others who would probably prove undesirable citizens, from the United States, and from the fact that it imposes no restrictions on persons not of such character, but, on the contrary, by naturalization laws, has actually encouraged them to enter the United States and become citizens, it is perfectly manifest that it is the desire of the national government that such persons should freely and unrestrictedly enter the country; and we submit that any legislation by a State which vests any Board with power to exclude such persons as the immigrants brought to the port of New Orleans by the Steamship Britannia, was and is in contravention of these Statutes.

VIII.

In conclusion, we submit that the section of the act complained of is unconstitutional; it is not a law; it confers no rights; it imposes no duty; it affords no protection; it is, in legal contemplation, as inoperative as though it had never been passed.

Norton vs. Shelby Co., 118 U. S. 425 at 442.

The case stands, in such event, as if the members of the Board had acted without sanction of law, and they must respond for the damages occasioned by their illegal acts.

Beer vs. Board of Health et als., 35 La. An. 1132.

Whatever may be the effect of a judgment against the Board, which is an agency created by the State, with power to sue and be sued, a judgment is enforceable by the ordinary process against the individuals comprising it, who wronged the plaintiff in error. As an injunction, as well as damages, was asked for, the Board was a necessary party to the suit.

We submit there was error in the judgment below, and the decree of the Supreme Court of Louisiana should be reversed, with directions to reverse the judgment of the Civil District Court for the Parish of Orleans, Division C, and to overrule the exception of no cause of action filed by the defendants, and remand the case for further proceedings.

W. W. HOWE,
W. B. SPENCER,
Of Counsel for Plaintiff in Error.

APPENDIX.

"A"

Extract from Act 192 of 1898 of the General Assembly of Louisiana.

SECTION 8. Be it further enacted, etc., That in the event that any case shall be reported to, or come to the knowledge of any local board, which is either deemed to be a case of contagious or infectious disease, or suspected of so being, the local board shall immediately isolate the same and communicate the fact by the most expeditious means at hand to the State Board of Health, together with the information as to what steps have been taken by the local board to isolate and care for the same, and shall from time to time communicate the progress of the case and disease to the State Board of Health. On receipt of such information by the said State Board of Health, the President of said Board shall, if he deem the emergency sufficient and necessary, send expert physicians to be selected by him to examine and diagnose the disease, and if on such examination and diagnosis the experts shall declare the case to be one of obnoxious or infectious nature, liable to spread, or to become dangerous to the general public health of the State, the State Board of Health or its President shall instruct the health officer of the Board of Health of the parish, city or town, as to what additional steps, if any, shall be taken to isolate the case, and prevent the spread of the contagion or infection therefrom and shall require that the local health officers shall immediately conform thereto, and put the same in operation. In the event that said local authorities shall fail to do so in a manner satisfactory to the State Board or its President, the State Board or its President shall take charge of the case and manage the same, through its own officers or employes.

All expenses, costs and charges incurred in the management, control and supervision in such cases shall be borne and paid by the parish, town or city in which the case may be, and on the failure of the parish or municipality to reimburse the State Board the amount of its expenditures incurred in such cases, the State Board of Health shall have the right to proceed by writ of mandamus in any court of competent jurisdiction to compel the payment of the same.

In case that any parish, town or city, or any portion thereof, shall become infected with any contagious or infectious disease, to such an extent as to threaten the spread of such disease to the other portions of the State, the State Board of Health shall issue its proclamation declaring the facts and ordering it in quarantine, and shall order the local boards of health in other parishes, town and cities, to quarantine against said locality, and shall establish and promulgate the rules and regulations, terms and conditions on which intercourse with said infected locality shall be permitted, and shall issue to the other local sanitary authorities instructions as to the measures adopted in quarantining against persons, goods, or other property coming from said infected localities, and these rules and regulations, terms and conditions shall be observed and obeyed by all other health authorities, provided that should any other of the non-infected portion of the State desire to add to the regulations and rules, terms and conditions already imposed by the State Board, they do so, on approval of the State Board of Health. **The State Board of Health may, in its discretion, prohibit the introduction into any infected portion of the State, persons acclimated, unacclimated or said to be immune, when in its judgment the introduction of such persons would add to or increase the prevalence of the disease.** The State Board of Health shall render to the local boards of health all the assistance in their power and which the condition of their finances will permit.

"B"

Act No. 149 of the General Assembly of Louisiana for 1890.

SECTION 1. Be it enacted by the General Assembly of the State of Louisiana, That it shall be the duty of all corporations, domiciled out of the State, doing business in the State, excepting mercantile corporations, to file in the office of the Secretary of State a declaration of the place or locality of its domicile, together with the name of its agent or officer in the State representing said corporation upon whom service of process can be made.

SECTION 2. Be it further enacted, etc., Whenever any such corporation shall do any business of any nature whatsoever in this State, without having complied with the requirements of section one of this act, it may be sued upon any cause of action in the parish where the right or cause of action arose, and service of process may be made upon the person or persons, firm or company, acting or transacting such business for such corporation, and each person or persons, company or firm shall be deemed the agent of said corporation upon whom service can be made.

"C"

Quarantine Regulations to be Observed at Foreign Ports and at Sea.

ARTICLE I.—BILLS OF HEALTH.

PAR. 1. Masters of vessels departing from any foreign port for a port in the United States must obtain a bill of health in duplicate signed by the proper officer or officers of the United States as provided for by law, except as provided for in par. 5.

The following form is prescribed:

PAR. 2. Bill of health:

Form No. 1931*a*.

UNITED STATES BILL OF HEALTH.

Name of vessel, ——. Nationality, ——. Rig, ——. Master, ——. Tonnage, gross; net, ——. Iron or wood. Number of compartments for cargo, ——; for steerage passengers, ——; for crew, ——.

Name of medical officer, ——.

Number of officers, ——.

Number of members of officers' families, ——.

Number of crew, including petty officers, ——.

Number of passengers, cabin, ——.

Number of passengers, steerage, ——.

Number of persons on board, all told, ——.

Port of departure, ——.

Where last from, ——.

Number of cases of sickness and character, during last voyage, ——.

Vessel engaged in —— trade, and plies between —— and ——.

Sanitary condition of vessel ——.

Nature, sanitary history, and condition of cargo, ——.

Source and wholesomeness of water supply, ——.

Source and wholesomeness of food supply, ——.

Sanitary history and health of officers and crew, ——.

Sanitary history and health of passengers, cabin, ——.

Sanitary history and health of passengers, steerage, ——.

Sanitary history and condition of their effects, ——.

Prevailing diseases at port and vicinity, ——.

Location of vessel while discharging and loading—open bay or wharf, ——.

Number of cases and deaths from the following-named diseases during the past two weeks:

Disease.	No. of cases.	No. of deaths.
Yellow fever	——	——
Asiatic cholera	——	——
Cholera nostras or cholerine	——	——
Smallpox	——	——
Typhus fever	——	——
Plague	——	——
Leprosy	——	——

Number of cases of sickness and character of same while vessel was in this port. —— ——.

Any conditions affecting the public health existing in the port of departure or vicinity to be here stated, ——.

I certify that the vessel has complied with the rules and regulations made under the Act of February 15, 1893, and that the vessel leaves this port bound —— for ——, U. S. of America, via ——.

Given under my hand and seal this ——day of ——, 190

(Signature of consular officer) ——— ———,

——— ———.

PAR. 3. Vessels clearing from a foreign port for any port in the United States, and entering or calling at intermediate ports, must procure at all said ports a supplemental bill of health as provided in Article 1. If a quarantinable disease has appeared on board the vessel after leaving the original port of departure, or other circumstances presumably render the vessel infected, the supplemental bill of health should be withheld until such sanitary measures have been taken as are necessary.

The following form is prescribed:

PAR. 4.—

SUPPLEMENTAL BILL OF HEALTH.

PORT OF———.

Vessel ——, bound from —— to ——, U. S. A.

Sanitary condition of port, ——.

State diseases prevailing at port and in surrounding country, ——.

Number of cases and the deaths from the following-named diseases during the past two weeks:

Diseases.	No. of cases.	No. of deaths.	Remarks. (Any condition affecting the public health existing in the port to be stated here.)
Yellow fever	.....	.....	
Asiatic cholera or cholerine	.....	.....	
Smallpox	.....	.....	
Typhus fever	.....	.....	
Plague	.....	.....	
Leprosy	.....	.....	

Number and sanitary condition of passengers and crew landed at this port.

Cabin, No.—. Sanitary condition and history, ——.
Steerage, No.—. Sanitary condition and history, ——.
Crew, No.—. Sanitary condition and history, ——.
Sanitary condition of effects, ——.
NOTE.—If disembarked on account of sickness state disease, ——.

Number and sanitary condition of passengers and crew taken on at this port, and sanitary condition of effects.

Cabin, No.—. Sanitary condition and history, ——.
Steerage, No.—. Sanitary condition and history, ——.
Crew, No.—. Sanitary condition and history, ——.
Sanitary condition of effects, ——.

Sanitary history of vessel since leaving last port.

(Cancel Form A, B, or C, as the case requires.)

Form.

A.—To the best of my knowledge and belief—

(Form A will be used at intermediate ports where the vessel does not enter and clear.)

B.—I have satisfied myself that—

(Form B will be used at intermediate ports where the vessel enters and clears.)

} no quarantinable disease has appeared aboard since leaving ——.

C.—Since leaving —— the following quarantinable disease has appeared on board ——, and I certify that the necessary sanitary measures have been taken.

I certify also that with reference to the passengers, effects, and cargo taken on at this port, the vessel has complied with the rules and regulations made under the Act of February 15, 1893.

Given under my hand and seal this ——day of —— 190

(Signature of consular officer) ——— ———,

——— ———.

PAR. 5. Under the Act of Congress approved August 18, 1894, vessels plying between Canadian ports on the St. Croix River, the St. Lawrence River, the Niagara River, the Detroit River, the St. Clair River, and the St. Marys River, and adjacent ports of the United States on the same waters; also vessels plying between Canadian ports on the following-named lakes, viz., Ontario, Erie, St. Clair, Huron, Superior, Rainy Lake, Lake of the Woods, Lake Champlain, and ports in the United States; also vessels plying between Mexican ports on the Rio Grande River and adjacent ports in the United States, are exempt from the provision of section 2 of the act granting additional quarantine powers and imposing additional duties upon the Marine-Hospital Service, approved February 15, 1893, which requires vessels clearing from a foreign port for a port in the United States to obtain from the consular officer a bill of health.

During the prevalence of any of the quarantinablo diseases at the foreign port of departure, vessels above referred to are hereby required to obtain from the consular officer of the United States, or from the medical officer of the United States, when such officer has been detailed by the President for this purpose, a bill of health, in duplicate, in the form prescribed by the Secretary of the Treasury, Quarantine Regulations of the United States, 1894.

ARTICLE II.—INSPECTION.

PAR. 1. The officer issuing the bill of health will satisfy himself, by inspection if necessary, that the conditions certified to therein are true.

PAR. 2. Inspection is required of—

(*a*) All vessels from ports at which cholera prevails, or at which yellow fever, smallpox, or typhus fever prevails in epidemic form.

(*b*) All vessels carrying steerage passengers.

But the inspection of this class may be limited to said

passengers and their living apartments, if from a healthy port.

PAR. 3. Inspection of the vessel is such an examination of the vessel, cargo, passengers, crew, personal effects of same, and including examination of manifests and other papers, food, and water supply, as will enable him to determine if these regulations have been complied with.

PAR. 4. When an inspection is required, it should be made by daylight, as late as practicable before sailing. The vessel should be inspected before the passengers go aboard, the passengers just before embarkation, and the crew on deck; and no cargo or person should be allowed to come aboard after such inspection except by permission of the officer issuing the bill of health.

ARTICLE III.—REQUIREMENTS WITH REGARD TO VESSELS.

PAR. 1. Vessels, prior to stowing cargo or receiving passengers, shall be mechanically clean in all parts, especially the hold, forecastle, and steerage; the bilges and limbers free from odor and deposit. The air streaks should be sufficient in number and open for ventilation. Disinfection of the vessel may be required by the medical officer of the United States.

PAR. 2. If any infectious disease has occurred during the last voyage, the portions of the vessel liable to have been infected should be disinfected. When required, this should be done by one of the methods hereinafter described.

PAR. 3. The air space and ventilation must comform to the provisions of the Act of Congress approved August 2, 1882, entitled "An act to regulate the carriage of passengers by sea." *

PAR. 4. The food and water supply should be sufficient, and water for drinking purposes, free from possibility of pollution, should be easily accessible.

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*Computation of air space in any steerage compartment must not include the space taken up by bunks, mattresses, life-preservers, or personal effects.

PAR. 5. Vessels departing from a port where cholera prevails should have two medical officers if more than 250 steerage passengers are carried.

PAR. 6. All bedding provided for steerage passengers must be destroyed or disinfected before being again used or landed, and mattresses and pillows used by steerage passengers shall not be landed.

PAR. 7. The hospitals of vessels carrying steerage passengers should be located on the upper or second deck and not in direct communication with any steerage compartment.

PAR. 8. Excepting when absolutely required, no solid partitions should be placed in any steerege compartment, obstructing light and air.

ARTICLE IV.—CARGO.

PAR. 1. At ports infected with cholera, earth, sand, loam, soft or porous rock, should not be taken as ballast. Nor at ports infected with yellow fever should such ballast be allowed on board vessels clearing for ports south of the southern boundary of Maryland when better material, such as hard rock, is obtainable, or when it is possible to use water ballast.

PAR. 2. Certain food products, viz., unsalted meats, sausages, dressed poultry, dried and smoked meats, rennets, fresh butter, fresh milk (unsterilized), fresh cheese, fresh bread, fresh vegetables, coming from cholera-infected localities or through such localities, if exposed to infection therein, should not be shipped.

PAR. 3. Fresh fruits from districts where cholera prevails shall be shipped only under such sanitary supervision as will enable the inspector to certify that they have not been exposed to infection.

PAR. 4. Articles of merchandise, personal effects, and bedding, coming from a district known to be infected, or as to the origin of which no positive evidence can be

obtained, and which the consular or medical officer has reason to believe are infected, should be subjected to disinfection prior to shipment by processes prescribed for articles according to their class.

PAR. 5. New merchandise in general may be accepted for shipment without question; and articles of new merchandise, textile fabrics, and the like, which have been packed or prepared for shipment in an infected port or place, with a special view to protect the same from moisture incident to the voyage, may be accepted and exempted from disinfection.

PAR. 6. All rags and all textile fabrics used in the manufacture of paper, collected or packed in any foreign port or place, must, prior to shipment to the United States, be subjected to disinfection by one of the prescribed methods.

(Old jute bags, old cotton bags, old rope, new cotton and linen cuttings from factories, not included).

PAR. 7. Rags, old jute, old gunny, old rope, and similar articles. gathered or packed or handled in any port or place where cholera or yellow fever prevails, or smallpox or typhus fever prevails in epidemic form, should not be shipped until the officer issuing the bill of health should be satisfied that the port or place has been for thirty days free from such infection, and after the disinfection of the articles.

PAR. 8. New feathers for bedding; human and other hair, unmanufactured; bristles; wool; hides not chemically cured, coming from a district where cholera prevails, shall be refused shipment until thirty days have elapsed since last exposure, unless unpacked and disinfected as hereinafter provided.

Feathers which have been used should be disinfected, and invariably by steam.

PAR. 9. The articles enumerated in the preceding paragraph coming from a district where yellow fever prevails,

destined for ports or places south of the southern boundary of Maryland during the quarantine season, or where smallpox or typhus fever prevails in epidemic form, should be refused shipment unless disinfected as hereinafter provided.

PAR. 10. Articles such as gelatin, glue, glue-stock, fish glue, fish bladders, fish skins, sausage casings, bladders, dried blood, having been in any way liable to infection in the process of preparation, gathering, or shipment, should be disinfected.

PAR. 11. Any covering, shipped from or through an infected port or place, and which the consul or medical officer has reason to believe infected, should be disinfected.

PAR. 12. Any article presumably infected, which can not be disinfected, should not be shipped.*

ARTICLE V.—PASSENGERS AND CREW.

PAR. 1. Passengers, for the purposes of these regulations, are divided into two classes, cabin and steerage.

PAR. 2. No person suffering from a quarantinable disease, or scarlet fever, measles, or diphtheria, should be allowed to ship.

PAR. 3. Steerage passengers and crew, coming from districts where smallpox prevails in epidemic form, or who have been exposed to smallpox, shall be vaccinated before embarkation, unless they show evidence of immunity to smallpox by previous attack or recent successful vaccination.

PAR. 4. Steerage passengers and crew who, in the opinion of the inspecting officer, have been exposed to the infection of typhus fever, should not be allowed to embark for a period of at least fourteen days after such exposure and the disinfection of their baggage.

PAR. 5. When practicable, passengers should not ship from an infected port. Steerage passengers coming from

*Upholstered furniture, sheepskins used as wearing apparel, bedding, bones, horns and hoofs.

cholera-infected districts must be detained five days in suitable houses or barracks located where there is no danger from infection, and all baggage disinfected as hereinafter provided; the said period of five days to begin only after the bathing of the passengers, disinfection of all their baggage and apparel, removal of all food brought with them, and isolation from others not so treated.

PAR. 6. Steerage passengers from districts not infected with cholera, shipping at a port infected with cholera, unless passed through without danger of infection and no communication allowed between passengers and the infected locality, should be treated as those in the last paragraph.

PAR. 7. Prior to sailing from ports infected with cholera, each passenger of the cabin class should produce satisfactory evidence as to his exact place of abode during the five days immediately preceding embarkation, and if it appears that he or his baggage has been exposed to contagion, such passenger should be detained such length of time as shall be deemed necessary by the inspecting officer, and the baggage should be disinfected.

PAR. 8. The rules prescribed for the disinfection of the baggage and personal effects of passengers and crew coming from cholera-infected ports should also be observed with regard to passengers and crew coming from ports and places where plague, yellow fever, typhus fever, or smallpox is prevailing in an epidemic form.

PAR. 9. Should cholera break out in the barracks or houses in which the passengers are undergoing the five days' observation, no passenger from said house or barracks should embark until five days' isolation from the last case and a repetition of the sanitary measures previously taken.

PAR. 10. All baggage of steerage passengers destined for the United States shall be labeled. If the baggage has been inspected and passed, the label shall be a red label bearing the name of the port, the steamship on which the

baggage is to be carried, the word "*inspected*" in large type, the date of inspection, and the seal or stamp of the consular or medical officer of the United States. All baggage that has been disinfected shall bear a yellow label, upon which shall be printed the name of the port, the steamship upon which the baggage is to be carried, the word "*disinfected*" in large type, the date of disinfection, and the seal or stamp of the consular or medical officer of the United States. It is understood, and it will be so printed on the blank, that the label is not valid unless bearing the consular or medical officer's stamp or seal.

PAR. 11. Each steerage passenger should be furnished with an inspection card (see form below). This card, stamped by the consular or medical officer, is to be issued to every member of a family, as well as to the head thereof.

INSPECTION CARD.

[Immigrants and steerage passengers.]

Port of departure ..... *Date of departure,*

Name of ship..... .....

Name of immigrant..... *Last permanent residence*.....

Inspected and passed at	Passed at quarantine, port of ....., United States	Passed by Immigration Bureau, port of.....
[Seal or stamp of consular medical officer.]	..... [Date.]	..... [Date.]

[The following to be filled in by ship's surgeon or agent prior to or after embarkation.]

Ship's list or manifest..... *No. on ship's list or manifest*.....

Berth No.	Steamship inspection.	1st day.	2	3	4	5	6	7	8	9	10	11	12	13	14	To be punched by ship's surgeon at daily inspection.

VACCINATED.

[Signature or stamp.]

[Reverse Side.]

Keep this Card to avoid detention at Quarantine and on Railroads in the United States.

Diese Karte muss aufbewahrt werden, um Aufenthalt an der Quarantäne, sowie auf den Eisenbahnen der Vereinigten Staaten zu vermeiden.

Cette carte doit être conservée pour éviter une détention à la Quarantaine, ainsi que sur les chemins de fer des États-Unis.

Deze kaart moet bewaard worden, ten einde oponthoud aan de Quarantijn, alsook op de ijzeren wegen der Vereenigde Staten te vermijden.

Conservate questo biglietto ande evitare detenzione alla Quarantina e sulle Ferrovie degli Stati Uniti.

Tento lístek musíte uschovati, nechcete-li ukarantény (zastavení ohlednê zjistêni zdraví) neb na dráze ve spojenych státech zdrzení byti.

Tuto kartocku treba trímat' u sebe aby sa predeslo zderzovanu v karantene aj na zeleznici ve Spojenych Státoch.

Par. 13. Cabin passengers from cholera-infected ports or places should be given a special inspection card, on which shall be printed the port of departure, name of passenger, name of ship, date of departure, and an indicated

space for the seal or stamp of the consular or medical officer.

PAR. 14. The baggage of such cabin passengers shall be labeled in the same manner as steerage baggage.

PAR. 15. In a port where cholera prevails, or where yellow fever prevails in epidemic form, the crews of passenger ships should remain on board during their stay. Should additional men be shipped, the same precautions should be observed with them as in the case of steerage passengers. If it is considered necessary, the crews of freight ships may be similarly treated at the discretion of the medical officer.

PAR. 16. Passengers and crews, merchandise and baggage prior to shipment at non-infected port, but coming from an infected locality, should be subject to the same restrictions as are imposed in an infected port.

PAR. 17. American vessels bound for the United States, or for Porto Rico, or for Cuba, shall not ship men in ports of Cuba or Porto Rico where smallpox or yellow fever prevails, unless such men have been inspected and passed by the quarantine officer.

ARTICLE VI.—REQUIREMENTS AT SEA.

PAR. 1. The master of the vessel should cause the following rules (which comprise those recommended by the International Conference of Rome, 1885) to be observed during the voyage.

(*a*) The soiled body linen of passengers and crew suffering from infectious disease should be at once immersed in boiling water or in a disinfecting solution.

(*b*) The water-closets should be washed and disinfected twice a day.

(*c*) Rigorous cleanliness and free ventilation should be maintained during the voyage on board all ships.

PAR. 2. An inspection of the vessel, including the steerage, should be made by the ship's physician once each day.

PAR. 3. Should cholera (or cholerine), yellow fever, typhus fever, or smallpox appear on board a ship while at sea, those who first show symptoms of these diseases will be immediately sent to the hospital; the ship's physician will then immediately notify the captain, and all of the effects liable to convey infection which have been in use will be destroyed or disinfected.

PAR. 4. The compartments occupied by those who fall sick with infectious disease should be disinfected, and, as far as possible, the compartments thus disinfected should be freely exposed to the air. If the vessel is an iron steamer and the compartments suitable, the entire compartment should be disinfected by steam. The articles liable to convey infection should remain in the compartments during the disinfection. After disinfection of the compartments the bedding and clothing may be removed and dried.

PAR. 5. Patients with infectious disease should be isolated.

PAR. 6. The hospital should be disinfected as soon as it becomes vacant.

PAR. 7. The dead should be enveloped in a sheet saturated with one of the strong disinfecting solutions, without previous washing of the body, and at once placed in a coffin hermetically sealed or buried at sea.

PAR. 8. A clinical record should be kept on the prescribed form, by the ship's surgeon, of all cases of sickness on board, and delivered to the quarantine officer at the port of arrival.

PAR. 9. Under the foregoing paragraphs disinfecting solutions are limited to the following: Strong: acid solution of bichloride of mercury (1 to 500); a 1 to 20 solution of pure carbolic acid. Weak: acid solution of bichloride of mercury (1 to 1000); pure carbolic acid, 1 to 40.

No. 286.

Brf. of Zacharie for D. C.

Office Supreme Court U. S.
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JAMES H. McKENNEY,
Clerk.

Filed April 14, 1900.

SUPREME COURT OF THE UNITED STATES.

No. 286.

OCTOBER TERM 1899.

COMPAGNIE FRANÇAISE DE NAVIGATION A VAPEUR

versus

STATE BOARD OF HEALTH ET ALS.

On Writ of Error from Supreme Court of Louisiana.

BRIEF OF DEFENDANTS IN ERROR.

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SYLLABUS.

The contemporaneous history of Act 192 of 1898, shows the object and purposes of the clause in Section 8, in excluding by quarantine regulation immigrants from entering territory infected with contagious disease, and also its wisdom and necessity.

A clause in the title, of an act organizing health boards, State and local, setting forth as one of its objects "to define the powers, duty and authority of said boards" is sufficient to cover provisions, in the body of an act, giving

powers germane to such boards, and is therefore not repugnant to the Coustitution of Louisiana of 1898, Art. 31. Cooley Cons. Lims., 173; H. L. A. 298; 33 A. 783; 35 A. 1141; 37 A. 188; Eng. and Am. Encyc. of Law, vol. 23, p. 229 et seq.; Endlich on Int. of Statutes, Section 59.

Section 8 of the Act of 1898 relates exclusively to quarantine regulations, maritime and land, external and extra State, concerning intercourse with infected and quarantined portions of the State, and the clause about immigrants is to be construed in connection with the whole context of the Section.

The repealing clause of the Act repeals all prior laws and parts of laws inconsistent with its provisions, although those prior laws are not mentioned by title or number. Cooley on Cons. Lims., p. 183; 41 Alabama, 9, 14; 47 Missouri, 29 Michigan, 236; 1 Nebraska, 182; 46 Missouri, 288; Eng. and Am. Encyc. of Law, vol. 23, p. 283 and authorities in note.

Quarantine laws of the various States are consistent with the Constitution of the United States, although they affect to a greater or less degree foreign commerce. 9 Wheat. 189, 203; 92 U. S. 275; 92 U. S. 269; 124 U. S. 474; 95 U. S. 465; 125 U. S. 493; 135 U. S. 112; 115 U. S. 661; 113, 27, 31; 140 U. S.; Miller's Lectures on Constitution, 480; 118 U. S. 463.

The XIV Amendment to the Constitution of the United States does not interfere with, impair or abolish the exercise of the legitimate police powers of the States. Parker and Worthington, Section 15, and authorities cited in note; Prentice, Police Powers, p. 27 and notes.

No treaty with a foreign power can relieve foreigners and aliens, whether immigrant or not, from conforming to the police laws of a State.

Quarantine laws of the States are not abolished or modified by the U. S. Immigration or other laws of the Federal Government. Prentice on Police Powers, 419.

To judge of the validity of a quarantine law, as of any other police law of a State, the only question to be decided is whether the Act is a reasonable exercise of the power and not one for ulterior and different purposes. Prentice on Police Powers, 105; Parker and Worthington's Public Health and Safety, Section 50 et seq. If it is reasonable it is not unconstitutional and must stand.

PLEADINGS.

This is a suit brought, originally, by a French Steamship Company against the Louisiana State Board of Health and the individual members thereof, for Twenty-Five Hundred Dollars, ($2,500.00) damages with legal interest from judicial demand, with a reservation to claim additional damages. The supplemental petition claims additional damages to the amount of Eight Thousand Five Hundred Dollars, ($8,500.00), making in all a claim of Eleven Thousand Dollars, ($11,000.00), as damages with legal interest from judicial demand. The basis of the demand is that defendants unlawfully prevented one of their steamships, namely the "Brittania," from landing, on the 29th of

September, 1898, 408 Italian immigrants from said ship in any portion of the State of Louisiana, which was then infected with yellow fever. The petition alleges that this action of defendants was based on the following portion of Section 8, of Act 192 of 1898:

"The State Board of Health may prohibit the introduction into any infected portion of the State persons acclimated, unacclimated, or said to be immune, when in its judgment the introduction of such persons would add to or increase the prevalence of the disease," and on the following resolution adopted by the Board of Health on September 29th, 1898:

"Resolved, that hereafter, in case of any town, city or parish of Louisiana being declared in quarantine, no body or bodies of people, immigrants, soldiers, or others shall be allowed to enter said town, city or parish, so long as said quarantine shall exist and that the President of the Board shall enforce this resolution."

The petition avers that the portion of the law cited "does not confer upon the said Board of Health the right to exclude healthy persons from coming from various foreign ports into the port of New Orleans as pretended by them," and if it does, that it is "in contravention of Article 1st, paragraph 8, section 3rd," of the Constitution of the United States relating to the regulation of commerce. In the supplemental petition it is further stated that said action of the Louisiana State Board

is in violation of the treaties between the United States and Italy, and further "in violation of the laws of the United States and the rules and regulations made in pursuance thereof relating to quarantine, at and immigration from foreign countries into ports of the United States; and especially Acts of Congress approved February 15th, 1893, and the rules and regulations made in pursuance thereof; and Acts of Congress of March 3rd, 1893, August 3rd, 1882, and June 26th, 1884, and the rules and regulations made in pursuance thereof; and of the treaties now existing between the United States on the one part, and the Kingdom of Italy and the Republic of France on the other part." An injunction was prayed for, which demand on the trial of a rule *nisi* and argument was refused by the Court *a quâ*. To plaintiff's petition defendants filed the peremptory exception of no cause of action, which exception, after hearing argument of counsel, was maintained and the suit of the plaintiff company dismissed, at its cost, by the Judge *a quo*. From that decision and decree an appeal was taken by plaintiffs to the Supreme Court of Louisiana which affirmed the judgment of the Lower Court from which this writ of error was taken to this Honorable Court.

ARGUMENT.

ORIGIN OF THE LAW.

It is a maxim of law that, in the interpretation and application of the terms of a statute, there

should be taken into consideration the contemporaneous history and circumstances which induced the Legislature to pass the law, in order to determine what is the object of the law and what evil, if any, its provisions were intended to remedy and obviate. It is well known, and it is a matter of public notoriety, that there are introduced annually into the State of Louisiana large numbers of European immigrants, and that the great bulk of these imported immigrants arrive here in mid-summer or in the early fall to meet the demand for labor, at that season of the year, for taking off the annual crops. During the prevalence of an epidemic of yellow fever in the city of New Orleans and other portions of the State in 1897, there arrived at the mouth of the Mississippi River a large number of Italian immigrants destined to be landed at New Orleans. The then Board of Health excluded those immigrants on the ground that their introduction would tend to increase and spread the then prevailing epidemic.

The writer of this brief, although not then the Attorney of the Board, was consulted by its members as to the legality of that exclusion. From his long prior experience as Attorney of the Board, he gave a verbal opinion that under the existing laws the Board did not have that power. While he had no doubt that under a plenary power to establish quarantine the right would exist, he was of opinion that under Acts of 1855, '58, '70, '76 and '77, the provisions of those Acts conferred no such plenary

power, but especially provided that healthy persons coming from non-infected ports on vessels in proper sanitary condition and with clean bills of health should be admitted to pratique and to land after satisfactory inspection. Those statutes only empowered the then Board of Health to enact the necessary rules and regulations to *carry out the provisions therein contained.* However, the then Board of Health, acting on the advice of its then Attorney and other Attorneys-at-law, excluded the immigrants, deeming that the great necessity and the rules of "*salus populi suprema lex*" overrode the strict technical and verbal interpretation of the Acts. When the writer drew up Act 192 of 1898, the war with Spain was then being waged, and, to meet the additional emergency of large bodies of troops coming into the State, as well as the introduction of numbers of immigrants who might enter portions of the State which might become infected as in 1897, the clause in Section 8 was inserted in the Act 192 of 1898 to meet those conditions, should they unfortunately eventually arise as they actually did subsequently. In our opponents' brief, they, for the first time, argue fully a point which they did not press in the Lower Court, and that is, that the clause in the Act did not and does not cover or authorize the action taken by the Board in adopting the previously quoted resolution. It is difficult to realize how such a contention can be made on any plausible ground. That clause authorizes the State Board of Health,

in its discretion, to prohibit the introduction into any infected portion of the State of persons acclimated or unacclimated, or said to be immune, when, in its judgment, the introduction of such persons would add to or increase the prevalence of the disease. The use of the words "discretion" and "judgment" shows plainly that the Legislature intended to, and did, entrust to the State Board the exclusive determination of the time when in its judgment and discretion it should become necessary to exercise the quasi judicial power vested in it by the Act. It would seem therefore that there can be no serious question as to the rightful exercise of the power by the Board under the very letter and intent of the statute. Now as to the manner of the exercise of the power it seems equally clear that the method adopted is in strict conformity with the letter and spirit of the law. The prohibition in the statute applies to the "introduction into any infected portion of the State of persons acclimated, unacclimated, or said to be immune." This language is ample and broad and covers fully the introduction of any persons into any infected portion of the State, whether they come from other portions of the State or whether from beyond the boundaries of the commonwealth. No other construction or interpretation can be reasonably placed upon the language.

What is the object and intent of the granting of this power to the State Board? It was to authorize the Board to prevent the addition of fresh

fuel to the flames of an epidemic prevailing in any portion of the State. It mattered not whence the persons came, whether from an uninfected portion of the State of Louisiana, or from another State of the Union, or from European or other foreign countries, the object being that these persons should not be admitted, because they were liable to contract the disease, and, having contracted it, to communicate it to others within the infected district and thereby add to or increase the prevalence of the disease. Perhaps no stronger case could be presented than the one at bar as illustrative of the necessity of such a provision. Here were 408 Italians, men, women and children, leaving the port of Palermo in Sicily on the 2nd day of September, 1898, arriving at the mouth of the Mississippi River on the 29th day of September, 1898. They had been subjected to a voyage of 27 days, almost in mid-summer, under the semi-tropical sun of the Mediterranean and the South Atlantic. Cooped up in the steerage during all this time; fed upon coarse ship's rations; furnished with water not of the best; crowded together, and most of them, if not all, debilitated by sea sickness and confinement. This mass of people were to be injected into a city in which yellow fever was raging, in a prostrated physical condition most susceptible of contagion, and of a class of people not only peculiarly liable to contagion, but one to which the prevailing disease, when contracted by them, was particularly fatal. They came from a

place on the latitude and on the isothermal line of North Mississippi and South Tennessee to a place like New Orleans, which is situated on a degree of latitude which runs through the northern portion of the Desert of Sahara and the isothermal line of which cuts through the City of Cairo in Egypt, or a few miles north of it. On their arrival here it is the custom of these people to herd together in the purlieus of this city, living two or three families in a room, utterly regardless of hygienic and sanitary laws — a people of all others who never call for medical assistance until the patient is ready to die, and then, in their case more than in any others, constant and systematic concealment is practiced, and every resistance and obstacle is thrown in the way of the sanitary authorities and proper sanitation. With this bare statement, we think that we can safely leave the question with this Honorable Court as to whether this law is a wise and salutary exercise of the police power in the preservation of the public health of the State, as well as the question as to whether this case is covered by the clause of the Act and also the issue as to the prudence and wise exercise of the power by the State Board of Health in this and all similar instances. Our opponents, in the course of their argument in the Lower Court, seemed to grant the propositions that the Courts could not review the exercise of the power by the General Assembly except in so far as to determine whether it was a reasonable exercise of the power, and they seemed to admit also that

the discretion, or the exercise of it by the Board, could not be reviewed by the Courts except in so far as to judge whether the power had been exercised as a reasonable police regulation and according to the terms of the statute.

To our surprise, for the first time and only in the Louisiana Supreme Court, as a desperate resort, they now urge that the clause now under discussion is obnoxious to Article 31 of the State Constitution of 1898 in the following respects: a) that this clause is not covered by the title of the Act; b) that the clause under discussion is to be construed together with the context of Sec. 8 of the Act and is not to be interpreted as applying to maritime quarantine against foreign vessels or ports; c) that the power advocated by us is not distinctly confined by the language of the text; (d that it is not to be construed as repealing Section 3045 R. S. and Act 68 of 1876. We propose to discuss the objections *seriatim* in the order in which our opponents placed them —

(a) TITLE.

The fourth clause of the title is "*to define the powers, duty and authority of said Board.*" Here is broad, full, and comprehensive language giving, in a general sense, the plain indication that the body of the Act will set forth *all* the "powers, duty and authority" of the Board, and it covers in its scope all things incidental and necessary to the proper protection of the health of the State, such

as may be set forth in the body of the Act. While the title also contains the clause to authorize "a maritime and land quarantine against places infected with such diseases," the latter in no wise controls, limits or circumscribes the broad and general terms of the fourth clause, by particularizing the quarantine to prevent the *introduction* of contagious diseases. It in no wise affects the "power," "duty" and "authority" of the Board to prevent the spread of the disease when once introduced by quarantining against persons coming into an infected district.

Cooley's Constitutional Law, p. 173, lays down the doctrine that it is sufficient if the title fairly indicates the purposes of the Act, and he cites decisions to that effect, among others one sustaining an "act to establish a police government for the City of Detroit" as being sufficient in its title to cover "all matters properly connected with the establishment and efficiency of such a government, including taxation for its support and Courts for the examination and trial of its offenders," which, as he says, "might be constitutionally included in the bill under its general title," and cites a number of cases in support of his text, among which is 4 L. A. 298. See also 33 A. 783; 35 A. 1141; 37 A. 188; Eng. and Am. Encyc. of Law, vol. 23, p. 229 et seq., all of which support the doctrine that there is a sufficient compliance with similar constitutional provisions, if the title indicates the general purpose of the law, without speci-

fying in detail each particular provision of the Act. This must necessarily be the case in nearly all laws of a complicated character, and especially so in health matters, as, were it otherwise, the titles of such Acts would be construed to mention all the different details included in them, and they would thus become a synopsis, abstract or index as long as the moral law. Thus the title to the Act No. 80 of 1877, only reads, in reference to quarantine, "to reorganize and render more efficient the Board of Health of the State of Louisiana; to define its powers and prescribe its duties and those of quarantine and other officers under its control," the whole title being only six and a half lines, and yet the body of the Act embraces fourteen sections, covering three pages in the bound volume, and setting forth a multitude of details. Indeed, the quotation from Endlich in our opponents' brief covers the point here exactly, for the clause under discussion here can and must be naturally "so construed as to bring it within the title" and without doing positive violence to the letter. We think then, that your Honors must conclude that the clause under discussion is fairly included and embraced, and indicated in the title, as one of the "powers" and "duties" mentioned in the title. But our opponents say that—

(b) THE CLAUSE MUST BE CONSTRUED IN CONNECTION WITH THE BALANCE OF SECTION 8 AND THAT IT

DOES NOT APPLY TO MARITIME QUARANTINE:

In order to test the truth of this contention, it is necessary to analyze briefly the body of the Act.

Sections 1 and 2 relate to the organization of the Board of Health, its officers, etc.

Section 3 relates to the powers and duties of the State Board, and gives it "authority and jurisdiction now possessed by the existing State Board of Health *under present laws now in force*, EXCEPT IN SO FAR AS MODIFIED AND CHANGED BY THE PROVISIONS OF THIS ACT. It shall have exclusive jurisdiction, control and authority over maritime quarantine, within the State, as now provided by existing laws of the State. It shall have supervisory power over land quarantine, and OVER THE CARE AND CONTROL OF INFECTIOUS DISEASES WITHIN THE STATE IN ORDER TO ACCOMPLISH THE SUBSIDENCE AND SUPPRESSION THEREOF, AND TO PREVENT THE SPREAD OF THE SAME. SUCH SUPERVISION AND CONTROL SHALL BE EXERCISED IN THE MANNER HEREAFTER LAID DOWN IN THIS ACT."— The italics and capitals are our own.

Thus it will be seen: 1st. That the powers granted are not confined to those under existing laws, but are extended to *such modifications and changes* as are incorporated in the Act; 2nd. It is only in regard to maritime quarantine and infec-

tious diseases that the word "control" is used, and in the last clause cited this "control" of maritime quarantine and contagious disease is to be "exercised in the manner hereinafter laid down in this Act"; 3d. The Board is to have "the care and control of infectious diseases within the State, in order to accomplish the subsidence and suppression thereof, and to prevent the spread of the same." Construing these provisions together, is it not plain that the Act in so many words extends the powers of the Board beyond those under existing laws, and points out that the Act in its subsequent provisions would give new and fuller powers? We think that it plainly does, and that this is obvious from the most cursory reading of the Section.

Sections 4, 5 and 6 relate to local boards and their powers, among which is the establishment of land quarantines, under the supervision of the State Board. Thus far these Sections, in relation to maritime quarantine, have only embraced the question of the *introduction or importation of contagious or infectious diseases.*

Sec. 8 now takes up the question as to the means to be employed *after the introduction or importation of the disease*, and proceeds to define the duties and powers of both the State and local boards as to localities actually infected. THE WHOLE OF SECTION 8 IS CONFINED EXCLUSIVELY TO THIS BRANCH, THAT IS, THE PREVENTION OF THE SPREAD OF THE DISEASE. It is in this connection,

and as strictly germane to this particular subject matter, that the clause under discussion follows logically and consistently and in its proper place, as one of the means of preventing the spread of the contagious disease either within the limits of the quarantined district, or beyond its boundaries. This is plainly one of the methods to which Section 3 refers, to be "hereinafter laid down in this Act."

This analysis of the body of the law is a clear exposition of the confection of the law, which we claim has been carefully and artistically drawn and is not open to the objection urged by our opponents. Thus weighed and considered, together with the history of the law, it seems to us, with all due deference to the sagacity of our opponents, to be impossible to narrow down the meaning and application of the clause to "quarantines of, by and between the cities, towns and parishes of the State." — On the contrary, the language is broad and full and applies as well to the entrance from points outside of the State into infected portions of the State, as it does to passage from the uninfected portions of the State into those quarantined. The whole context of Section 8 indisputably points to this, and as a matter of history the clause was chiefly and principally inserted to meet just such a case as the present one, the prototype of which had occurred in 1897, and had called pointedly to the legislative mind the necessity of just such a provision.

(c) But it is said that THE POWER EXERCISED BY THE BOARD IN THE INSTANT CASE IS NOT DISTINCTLY AND EXPRESSLY CONFERRED.

We do not consider it worth our while to spend words, or to vex the patience of this Honorable Court, in following the specious argument of counsel on this point through all its details. A bare reading of the clause in question carries the conviction that it means precisely what the State Board understood it to mean, and that their action based on it is in strict conformity therewith. The English language, in our opinion at least, could not make its meaning plainer. No sophistry or labored argument can do away with its plain terms and its obvious intent, spirit and apposite application to the case in hand.

(d) Our opponents also urge that ACT 192 OF 1898 DOES NOT REPEAL SEC. 3045 R. S. AND ACT No. 68 OF 1876, BUT IS TO BE CONSTRUED AS CONTINUING THEM IN FORCE, AS IT DOES NOT ESPECIALLY REPEAL THEM BY TITLE OR NUMBER.

This proposition is sought to be based on the language of Section 9 of the Act of 1898. That Section repeals all laws and parts of laws in conflict with, inconsistent with, or superceded by the provisions of this Act. "But all laws," etc., now existing and not in conflict with, or inconsistent with, or superceded by, the provisions of this Act. are continued in full force, and this Act shall not

be construed or interpreted so as to deprive the State Board of Health or the local Board of any powers or authorities, *except in so far as these powers and authorities may be modified or changed by the provisions of this Act.*" (The italics are our own.) It then goes on to repeal certain Special Acts, by naming them. And yet, in the face of these plain provisions, it is seriouly contended that the Section of the Revised Statutes and the Act of 1876 are not repealed by the Act of 1898, in so far as the latter varies from the former. Of course, it is elementary that where a new Act adds to, or varies from, a former Act, no express mention of the prior laws need be made in the later Act. Cooley on Cons. Lims., p. 183; 41 Ala., 9; 14 Mich., 236; 1 Neb., 182; 47 Mo., 29; 46 Mo., 288; Eng. and Am. Encyc. of Law, vol. 23, p. 282, and authorities there cited.

We have forborne from following and discussing the authorities cited by our opponents on these various abstrusely technical points, as we have failed to discover their application, in any respect, to the points hereinbefore discussed.

Their chief and main reliance is on —

I.

THE UNCONSTITUTIONALITY OF THE ACT AS BEING IN CONFLICT WITH THE CONSTITUTION OF THE UNITED STATES AND THE LAWS AND TREATIES THEREUNDER.

It is urged by our opponents, that the State Statute is in conflict with Sec. 8, Art. 1, of the Constitution of the United States, as they allege that "it is an attempted regulation or prohibition of foreign commerce." Under this heading in their brief they proceed at some length to argue that, in interpreting this Article, the Supreme Court of the United States has decided that in many matters of trifling importance, and local in their character, which directly or indirectly affect foreign commerce, "while Congress undoubtedly had the right to legislate on such subjects to the exclusion of all State legislation," yet "that the States should be *permitted to legislate in reference thereto in the absence of legislation by Congress.*" We italicise the last clause to show that our adversaries are indirectly attempting to establish the proposition that a State's police power of establishing quarantines to protect the health of its citizens is purely permissive, and not one of the reserved powers of the States. Among other cases, they cite as the leading case supporting that doctrine: Gibbons vs. Ogden, 9 Wheat., 189. In that case, in which Chief Justice Marshall, the most extreme of all Federalists and Centralizationists, delivered the opinion of the Court, says on p. 205, discussing "the Acts of Congress passed in 1796 and 1799, empowering and directing the officers of the general government to conform to, and assist in the execution of the quarantine and health laws of a State, proceed, it is said, upon the idea that these

laws are constitutional. It is undoubtedly true that they do proceed upon that idea, and the constitutionality of such laws has never, so far as we are informed, been denied. But they do not imply an acknowledgment that a State may rightfully regulate commerce with foreign nations or among the States; for they do not imply that such laws are an exercise of that power, or enacted with a view to it. On the contrary, they are treated as quarantine and health laws, are so denominated in the Acts of Congress, and are considered as flowing from the acknowledged power of a State, to provide for the health of its citizens." So, on p. 203, the Court said, speaking of State inspection laws: "They form a portion of that immense mass of legislation, which embraces everything within the territory of a State not surrendered to the general government; all which can be most advantageously exercised by the States themselves. Inspection laws, *quarantine laws*, *health laws of every description*, as well as laws for regulating the internal commerce of a State, and those which respect turnpike roads, ferries, etc., are component parts of this mass." (The italics are our own.)

Again a quotation is given from Chief Justice Fuller's opinion in Leisy vs. Hardin, 135 U. S. 112, and in the very language quoted the learned Chief Justice included among State Statutes which have been sustained as "police or health laws" "subjects of a kindred nature not strictly of com-

mercial regulation." That the able Chief Justice himself coincided in opinion with the established jurisprudence of the Court on this subject is plain, when we consider that, in a subsequent case, 140 U. S. 554, he broadly said, as the organ of that august tribunal, in a unanimous opinion of all the judges: "The power of the State to impose restraints and burdens upon persons and property in conservation and promotion of the public health, good order and prosperity, *is a power originally and always belonging to the States not surrendered by them to the general government nor directly restrained by the Constitution of the United States* AND ESSENTIALLY EXCLUSIVE. *And this Court has uniformly recognized State legislation* LEGITIMATELY FOR POLICE PURPOSES, AS NOT IN THE SENSE OF THE CONSTITUTION NECESSARILY INFRINGING UPON ANY RIGHT WHICH HAS BEEN CONFIDED EXPRESSLY OR BY IMPLICATION TO THE NATIONAL GOVERNMENT." (The italics and capitals ore our own.)

Mr. Justice Miller's lectures on the Constitution are also quoted from by our opponents. It is plainly obvious that Judge Miller is not speaking of those police powers such as quarantine, which were never granted to the Federal Government, but were reserved to the States. On p. 480 of his work he says, under the heading of "Quarantine": "States may enact quarantine laws which amount

to a regulation of commerce, though not intended to be so, and maintain them until Congress acts in the matter by covering the same ground, or by forbidding State legislation."

In Chy. Lung vs. Freeman, 92 U. S., 275, also cited by appellants, it is only necessary to quote the syllabus, which correctly digests the decision, to show that it has no application to the case at bar: "But the features of the Statute are such as to show very clearly that the purpose is to extort money from a large class of passengers, or to prevent their immigration to California altogether." Thus the Court decided that the Statute was a palpable abuse of the police power, not for the purpose of protecting the health or morals of the State of California, but for the purpose of deriving revenue. So in Henderson et al. vs. Mayor, 92 U. S., 269, it was decided that the Statutes of New York called in question, were not a proper exercise of the police power but "a tax on the ship owner for the right to land such passengers, and in effect, on the passenger himself, since the ship master makes him pay in advance as part of his fare." — Syllabus No. 5.

So in 124 U. S., 474, also cited by appellants, the Court said, quoting with approval from 93 U. S., 99: "In conferring upon Congress the regulation of commerce it was never intended to cut off the States from legislating on all subjects relating to health, life, and safety of their citizens, though the legislation might indirectly injure the commerce

of the country. Legislation, in a great variety of ways, may affect commerce and persons engaged in it without constituting a regulation of it within the meaning of the Constitution. So, in 95 U. S., 465, the Court decided a Statute of Missouri unconstitutional, which excluded all Texas cattle from the State of Missouri during eight months of each year, the Court saying, p. 470: "The object and effect of the Statute are to obstruct interstate commerce, and to discriminate between the property of citizens of one State and that of citizens of another State;" and on p. 473: "Tried by this rule, the Statute of Missouri is a plain intrusion upon the exclusive domain of Congress. *It is not a quarantine law.* It is not an inspection law." Again the Court said: "The police power of a State can not obstruct foreign commerce or interstate commerce *beyond the necessity of its exercise.*"—The italics are our own. Thus the converse of the proposition follows that the police power of a State *can* obstruct foreign commerce or interstate commerce *within the necessity of its exercise.*

In the case of Bowman vs. Chicago Str. R. Way Co., 125 U. S. 493, cited by appellants, the question was in regard to a law of Iowa to prevent intemperance in the use of intoxicating liquors, which was held to be a regulation of commerce and void. The Court is particular in differentiating the issue from the proper exercise of the police power of a State, for on page 493 it guardedly

said: "It is not an inspection law; *it is not a quarantine law.*" (The italics are our own.) It thus is distinctly intimated that were the Statute *a quarantine law*, it would not be obnoxious to the provision of the Constitution in regard to the regulation of commerce.

So in the quotation in the brief of our opponents, the Court says: "The States did not surrender to the National Government the control each of its internal commerce nor the police power vested in them as sovereigns to be exercised for the safety, health and welfare of their citizens.

* * * * It may pass such reasonable laws as it may deem fit for the protection of health and safety of its citizens and their property * * and in the exercise of the right of self-defence vested in every sovereign power *exclude from its borders persons or property which by nature or disease are liable to injure the health or morals of its people. The exercise of this right, while it may, in a measure, bear upon commerce, is nevertheless considered not such a regulation or interference with commerce as to invade the domain of the National Government, or conflict with any of those powers with which it was intended to invest.* Bowman vs. Railway Co., 125 U. S. 465; Leisy Hardin, 135 U. S. 112." (The italics are our own.) And in 7 Howard, 424, also cited by our opponents, speaking of the police powers of the States, the Court said: "Among them qualified rights to protect their inhabitants by quarantine

from disease; imperfect and qualified, because the commercial power which Congress has is necessarily connected with quarantine. And Congress may, by adoption, presently and for the future, provide for the observance of such State laws, making such alterations as the interests and convenience of commerce and navigation may require, always keeping in mind that the great object of quarantine shall be secured."

In 115 U. S. 661, also cited by our opponents, the Court says "that there is a power, sometimes called the police power, which has never been surrendered by the States, in virtue of which they may, within certain limits, control everything within their respective territories, upon the proper exercise of which, under some circumstances, may depend the public health, the public morals or the public safety, is conceded in all the cases. Gibbons vs. Ogden, 9 Wheat. 1, 203. In its broadest sense, as sometimes defined, it includes all legislation, and almost every function of civil government. Barbier vs. Connolly, 113 U. S. 27, 31."

We have thus reviewed all the authorities cited against us, and we think that all of them are in our favor. We could quote at length from many others not mentioned by our adversaries, but we content ourselves in referring only to Morgan vs. Louisiana, 118 U. S., 463, where all the antecedent cases on this point are reviewed and the prior doctrine of the Court is reaffirmed.

In 118 U. S., an intimation is thrown out by

the Court as in Peets vs. Morgan, that the Federal Government might assume exclusive jurisdiction of quarantine. The most cursory examination of thoses cases, however, will show that these expressions used *arguendo* are *obiter dicta*, as that question was not before the Court in either case, and if it were, the emphatic declaration on this subject, in 140 U. S., has overruled any such doctrine.

The strained conclusion which our adversaries seem to draw from all these authorities and decisions is a strange *non sequitur*. It is "that which does not belong to commerce, is within the police power of the State; that which does not belong to commerce, is within the exclusive jurisdiction of Congress." Although somewhat obscurely expressed by the use of the indefinite word "belong," they evidently mean that the States cannot in the exercise of police power affect or interfere, directly or indirectly, with extra-State or foreign commerce. This would lead to a *reductio ad absurdum*. Quarantine, interstate or maritime, against foreigners, must necessarily affect and interfere to a greater or less degree, either by inspection, detention, disinfection or exclusion, with commerce from other States or foreign nations, therefore say our opponents, the States have no right, in the exercise of their police power, to establish any quarantine at all against other States of the Union or foreign nations. And yet, as we have shown, the whole current of authorities already cited establish

that the power of quarantine is one of the police powers of the States, and although the exercise of it may, and actually does, in many instances, interfere with commerce, domestic and foregin, such health regulations are not to be regarded as regulations of commerce, and are not in violation of the Constitution of the United States. This seems to be conclusively and permanently established, beyond serious question.

II.

Plaintiffs' and appellants' counsel have interpolated into their briefs and arguments in the Supreme Court, for the first time, a constitutional objection to the clause on the Statute, *not contained in or covered by their pleadings.* In neither their petitions nor in their argument in the Court of the first instance was any mention made of the power granted in the Act being obnoxious to the Fourteenth Amendment in depriving plaintiffs and appellants of their life, liberty or property without due process of law." It was sprung there, in that Court, for the first time, and is *clearly inadmissible under these circumstances.* In the lower Court the only constitutional provision discussed was the commerce clause. However, this new constitutional objection, even if it were admissible, could not prevail. Neither these foreign immigrants nor this alien Steamship Company have been deprived of their lives, liberty or property, without due process of law. In a certain sense, they have been

restrained in their liberty, and the free use of their property has been limited and abridged, but only to the limited extent that the legitimate exercise of the State's police power has controlled them for the preservation of the public health, and to prevent the spread of a dangerous and pestilential disease, and even from the contraction of the contagion by themselves. The Fourteenth Amendment has never been and never can be so construed as to abolish the necessarily summary methods of police protection, especially that branch which covers public health and sanitary safety. The construction of our levees, and the invasion of rights of private property without legal process is an example of the exercise of a branch of this power not subject to the constitutional objection. The summary demolition of private or public buildings to stop the spread of a conflagration is another. The condemnation and removal of unsafe buildings is another. There are many other cases of similar character, which will recur to almost any mind on a moment's reflexion, in all of which legal process is not requisite. When we turn to sanitary or health law, numbers of other examples immediately suggest themselves. For instance, the enforced isolation of patients sick with contagious diseases; the confinement in the infected dwellings of persons who have been in contact with such sick persons; the enforced vacation of unsanitary buildings; the invasion of premises and our most private places for the purpose of

sanitary inspection by health officers; the prompt suppression and abatement of nuisances, dangerous to the public health, by the sanitary authorities; the enforced removal, in many States, of persons sick with contagious diseases to special hospitals; the destruction of effects affected with contagious diseases; the killing of live stock affected with contagious diseases; the killing of animals having rabies or hydrophobia; the fumigation and disinfection of infected premises; compulsory vaccination in some States, and in others a denial of public school privileges to unvaccinated children; the inspection of food products, and the destruction of decayed or tainted provisions intended for human consumption; the inspection of coal oil and petroleum and the branding of unsafe, dangerous or explosive illuminating fluids of that description; the whole system of quarantine itself, whether maritime or land, foreign or domestic, intra State or inter State, all these, and many more might be added, are cases in which no process of law is required. If the clause under discussion here be unconstitutional, as being in conflict with the XIV Amendment, then all the laws we have named are equally so. Were such legal process required, the very objects had in view would be defeated in these police laws. The very nature of the exigencies and emergencies demanded in such cases is such as to render all legal process an impossibility in most if not all of them. The principle of *salus populi suprema lex* governs in this regard *ex necessitate*

rei, and commands celerity, dispatch, promptness, and effectiveness, in immediately applying the summary remedies now provided by law. All citizens, aliens, denizens, immigrants, residents, transient passengers and all other persons of any description are alike subject to some of these summary invasions of their right, liberty and property, for the universal common good and general sanitary and hygienic welfare. No alien immigrant or foreign corporation possesses any immunity from the operation of these laws in their property or person any more than an American citizen or a resident of the State. So patent is this elementary principle of sanitary law that it may be regarded as a truism, which needs no citation of authority to support it, other than that of common sense and reason. Without it, civilized society could hardly exist. To abolish it and to compel the resort to the slow process of the law would be to remand us to a state of semi-savagery, which would compel large communities to resort again to a nomadic life like the tribes of the desert to escape from their own filth and the diseases engendered thereby.

Parker and Worthington, Section 15 of their Work on Public Health and Safety, say, speaking of the Fourteenth Amendment: "It has been frequently adjudged to be the settled doctrine of the United States that this amendment was not designed to interfere with or in any degree to abridge or impair the exercise of the police power of the States," and in the notes they cite as supporting

their text, 140 U. S., 545; 127, id., 678; 123 id., 623; 113 id., 27; 118 id., 356; 30 Fed. Rep., 51; 39 Conn., 63; 104 N. C., 714; 111 U. S., 746. See also Prentice, p. 27, on this point with authorities.

III.

Our opponents, however, urge that this statute is IN CONFLICT WITH CERTAIN LAWS AND TREATIES OF THE UNITED STATES, namely, the treaties with the kingdom of Italy and that with the republic of France. We hardly think it necessary to cite authorities or precedents to show that treaties with foreign governments do not abrogate the police and quarantine laws of the States, nor divest the States of the power of protecting their people in their health and safety.

The police power of the States under the decisions of the United States, among which is the leading case of Stone vs. Mississippi, is inalienable. Foreigners and aliens bound for and coming into a State are as much subject to the police power of quarantine as the citizens of the States. All that the treaties guarantee them is protection, subject to a compliance with all police laws. No treaty in any civilized States could or does grant them any immunity from police laws. No treaty with any civilized State could or does attempt to grant them any immunity from police laws. In regard to the immigration laws, Prentice in his

work on the Police Power, p. 419, says: "The quarantine laws established by the different States had always been recognized, and the immigration laws had not diminished their effectivity. The Supreme Court held that the matter is one in which the rules should govern, may in many respects be different in different localities, and for that reason be better understood and more easily establishsd by such authority." Authorities in note 1 are cited in support of the text.

In the case 57 F. R. 279, the Court said, speaking of the detention of healthy persons, by the States, who had already passed the U. S. authorities and held their health certificates, and considering the claim that the State's statute violated treaties with foreign powers: "We find nothing in any existing treaty with Norway or Sweden in conflict with the institution or enforcement by any one or more of the States of the Union of the quarantine regulations."

But it is said that the Federal Government has assumed control of quarantine by the Act of Congress of February 15th, 1893, and that the State's Statute under discussion here conflicts with the Federal Statute, and must therefore yield its validity. The Federal Statute provides just the contrary, for in Section 3 it is provided that the Federal authorities shall "co-operate with and aid State and municipal boards of health in the execution and enforcement of the rules and regulations of such boards," and in Section 1 of

the Act it is made the duty of "all vessels to act in accordance with the provisions of this Act and with such rules and regulations of State and municipal health authorities as may be made in pursuance of, or consistent with, this act." So State quarantine acts are not abolished by the Federal Statute, but the Federal Government only seeks to supplement them, and aid and co-operate in their execution.

In the course of our oral argument, in the Supreme Court of Louisiana, His Honor, Mr. Associate Justice Miller, propounded the question as to whether the exclusion of healthy immigrants could be considered as an exercise of the quarantine power properly and strictly speaking. To which we answered that, in our opinion, it was. The word "quarantine" is used by the commentators both in the sense of preventing the admission of persons affected with contagious diseases, and also in the sense of "isolation" and preventing access of healthy persons to persons sick with contagious diseases. Parker and Worthington, p. 91, use it in the latter sense, saying "and to prevent the spread of contagion by providing for the regular isolation or domestic *quarantine* of every case of contagious disease which occurs in the community." The italics are our own. But even if the intimation of Mr. Justice were correct, that exclusion of healthy persons was not strictly the exercise of a "quarantine" power, it would yet be a police power and a health law, which we have already

seen, is declared by the U. S. Supreme Court to be within the control of the States, as an ordinary sanitary law.

Indeed, the only relevant qnestion in this controversy is as to the

IV.

REASONABLENESS OF THE STATE STATUTE.

This presents the question as to whether the clause of the Louisiana Statute is a bona-fide exercise of the police power. If it is, your Honors must maintain its constitutionality. If it is not, and is a mere subterfuge to shut out commerce, or to raise revenue, or to regulate intercourse with foreign nations, it is an abuse of the police power and should not be maintained. Our opponents have entered into a long argument, to show that the power of temporary exclusion might be grossly abused and perverted to subserve other purposes than the protection of the health of the State. While advancing this test of the legality of the State Statutes, they at last fall back upon the reasoning that the power conferred by the Act might be abused: 1st) By the Board unnecessarily and without proper cause declaring a parish, city or other portion of the State as being infected, when it really was not; 2d) By declaring a particular disease infectious, when it really was not so; 3d) By wrongfully declaring that the admission of

persons would spread the disease, when in fact their admission would have no such effect, and by this wrongful and arbitrary use of the police power could erect barriers against commerce, for other ulterior purposes than the *bona-fide* preservation of the public health.

We shall not follow further their lengthy disputation in this regard. It is a sufficient answer to these imaginary fears, that if there should be such an abuse of the power, the Courts would invalidate their actions, as the Supreme Court of the United States did the Statutes of Missouri in the cattle cases, and the laws of New York and California, taxing passengers, as well as the laws of other States, which, under the guise of police laws, really sought to subserve other purposes, by unconstitutional methods. If the law be reasonable, it must stand. Parker and Worthington's Public Health and Safety, Secs. 60, 61 and 62, p. 68 et seq., and a vast multitude of authorities cited in the notes thereto, from the States and U. S. Courts, all establish the principle that if the law be a *bona-fide reasonable exercise of the police power, for the evident purpose of protecting the public health*, it is a valid exercise of the police power, and must be maintained. See also Prentice on Police Powers, p. 105, where the whole subject is treated under the heading of Health and Quarantine laws. Although we have not been able to find authorities just in point, sustaining a law similar to our own, as our situation is peculiarly *sui generis*, yet we

have found laws, closely similar in some respects, have been maintained. For instance, laws requiring all imported rags, whether coming from infected ports or not, to be detained and disinfected, have been uniformly sustained in many cases. A Statute of Michigan requiring all persons coming into the State from the North to be detained for days and their effects disinfected, although they came from uninfected portions of Canada, were in perfect health, and had proper certificates of health, although smallpox prevailed in a small portion of Canada, was sustained by the Federal Courts as a reasonable quarantine regulation ; so, in 1894, the U. S. Secretary of the Treasury suspended the entire introduction of immigrants into the United States from the whole of France, because in some limited portions of that country cholera prevailed, and although these portions were strictly quarantined by the French government. All these acts were done in the exercise of the quarantine power. The Atlanta conference of Boards of Health of the Gulf and South Atlantic States, a body composed of the most enlightened and scientific sanitarians, recommended that, in case of the breaking out of an epidemic of contagious disease in a given locality, the locality should be depopulated as rapidly as possible, in order to prevent the spread of the disease. How much more necessary is it then to prevent fresh material from being imported into an infected and quarantined locality, and thereby stop fresh fuel from being added to the

flames of a consuming epidemic and thus extending its prevalence, and augmenting the circle of its devastating and desolating force? We cannot better close this brief than by transcribing the able opinion of the judge of the District Court:

"The petition filed in this case does not negative or put at issue the fact that the City of New Orleans and the adjacent territory was infected with a fever, believed by many to be yellow fever, in the summer of 1898, but the plaintiff alleges, in substance, that one of its vessels, engaged in foreign commerce, bound for the port of New Orleans, with a clean bill of health, from a non-infected port, having on board several hundred healthy persons who had taken passage for said port of New Orleans, was stopped by order of the Board of Health of Louisiana and prohibited from landing said passengers either in New Orleans or within a hundred miles of said city; and it is claimed that said action was injurious to plaintiff, and infringed upon the authority vested by the Constitution of the United States in the Federal Government."

The question is whether the petition discloses a cause of action. One of the paragraphs of Section 8, of Act 192 of '88, reads as follows:

"The State Board of Health may, in its discretion, prohibit the introduction, into any infected district in the State, (of) persons acclimated, unacclimated or said to be immune, when, in its judgment, the introduction of such persons would

add to or increase the prevalence of the disease."

There is no doubt, therefore, that the Board of Health had the authority to do what was done if the State could confer that authority. The power to establish quarantine is not confined upon the Federal Government by any specific grant in the Constitution, nor is the exercise of that power prohibited to the States; hence, in the language of the 10th Amendment, it is "reserved to the States, respectively, or to the people," and if any like authority exists in the government of the United States it must be derived by implication — as necessary or appropriate to the exercise of such authority as is specifically granted. But, as the government of the United States has not, under a claim to such implied authority, enacted any quarantine law of general application, except in the way of affirmance of existing State laws, the effect of such a law, if enacted, need not be here considered, since it will hardly be denied, that in quarantine matters — unlike regulations of commerce — the silence of Congress at least leaves the field free to State legislation, even should it be contended that the voice of the States could be silenced by the action of Congress.

The power to regulate commerce is vested in Congress by specific grant, and is exclusive — and it is well settled that — save as to matters of small, local concern, the silence of Congress and its failure to impose restrictions upon commerce, means that the States are to impose none. The exercise

by the States, however, of the power to maintain quarantine — necessarily, at times, involves an interference, to a greater or less degree, with the operations of commerce, and they have been frequently called on to harmonize these powers coexisting in the State and Federal Government in cases where it was plain that they had reached the point of conflict. The question thus presented being a federal one could be determined in last resort only by the Supreme Court of the United States, and that august tribunal, in an unbroken line of decisions, has held that laws enacted by a State in the legitimate exercise of the authority inherent in and retained by such State upon the creation of the Federal Government to establish and maintain quarantine, may be enforced even to the extent of operating incidently to effect, obstruct and hinder commerce without impinging upon the exclusive authority to regulate commerce which is vested by the Constitution in the Congress.

That the rule thus established is intended to accord to the States the liberal use of their authority in the premises is fairly illustrated by the fact that not only are they permitted to hold in quarantine and inspect and disinfect vessels engaged in interstate and foreign commerce, and to cut off communication, whether commercial or otherwise, between the territory within their jurisdiction and other States and countries from which, exercising their discretion and judgment, they believe that disease may be imported, but they are

also permitted to impose upon commerce itself the burden of maintaining the quarantines which they establish and to collect from vessels showing clean bills of health, and sailing from and bound to non-infected ports, charges which are held to be charges for services rendered to such vessels, facilitating their operations as vehicles of commerce, and which are devoted to the maintenance of quarantine, the reason for the existence of which is to be found rather in the obligations of the State government to protect their citizens from disease than in any right or obligation vested or resting on them to interfere with vehicles of commerce or their facilitation or otherwise.

In referring to quarantine regulations, such as these, the Supreme Court of the United States, through Justice Miller, has said : " Whether these precautions were judicious or not, this Court can not inquire. They are a part of and inherent in any system of quarantine." 118 U. S. 455. And it has also been held that it would be assumed that wharfage charges were not in excess of what was necessary to maintain the wharves. It is true that in Railroad Company vs. Husen, the Court did find that a Statute purporting to have been passed in the exercise of the police power of the State of Missouri exceeded justifiable limits. This, however, was the exception, and I take it that the rule is that the States will be presumed to have exercised wisely the discretion vested in them in such matters, and that in quarantine matters, unless the

legislations adopted are manifestly unreasonable and exceed the requirements of quarantine, they will not be interfered with.

The question presented here is, then, narrowed down to this. Is it a reasonable and legitimate quarantine regulation which does not impinge upon the authority vested exclusively in Congress to regulate commerce for a State Board of Health, acting under State authority, to exclude from an infected district persons who, in its judgment, "would add to or increase the prevalence of the disease?" And this question, I think, should be answered in the affirmative.

No one would question the right of the local authorities to prohibit the introduction into a town or city, in which a conflagration was raging, of material calculated to feed the flames or increase the danger to life, whether it be gunpowder, oil, or even such ordinarily harmless stuff as shavings or cordwood. And it seems to me, if a clean ship, with healthy passengers, bound from one healthy port to another port, can be charged under quarantine regulations for inspection upon the ground that it is a service rendered to such ship as a vehicle of commerce, *a fortiori* can the exclusion of healthy persons from an infected place be justified upon the ground, not only that it prevents the spread of disease among those whom the State is bound to protect, but in the name of humanity that it is extending protection to the stranger at the gates of the State from disease and death, and

is the rightful and legitimate exercise of a police power which has never been surrendered ?

For these reasons, the exception should be maintained and this suit dismissed at plaintiff's costs.

We also invite your Honors' especial and careful attention to the opinion of the Honorable Supreme Court of Louisiana, in which the whole case is fully and ably reasoned and argued, to be found on pages 12 et seq. of the Transcript.

We respectfully submit that the judgment of the Lower Court should be sustained by your Hono.s, and plaintiff's petition be dismissed as containing no cause of action.

F. C. ZACHARIE,

Attorney for Defendants in Error.

FILED
OCT 30 1900
JAMES H. McKENNEY,
Clerk.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1900.

No. 50.

COMPAGNIE FRANCAISE, ETC., PLAINTIFF IN ERROR,

vs.

STATE BOARD OF HEALTH OF LOUISIANA ET AL

The following references to United States statutes requiring United States officers to observe, aid, and assist in the execution of State laws of quarantine and health:

Act approved February 25, 1799, sec. III, chap. 12, p. 619, 1st vol. U. S. Statutes at Large 1789–1799, sections of act 1 and 2.

Tit. LVIII, p. 931, Revised Statutes of the U. S., 2d edit., 1789–1877, sections 4792 and 4793.

are respectfully submitted.

F. C. ZACHARIE,
Of Counsel for Defendant in Error.

Supreme Court of the United States.

No. 4.—October Term, 1901.

The Compagnie Française de Navigation a Vapeur vs. The State Board of Health, Louisiana, et al. } In error to the Supreme Court of the State of Louisiana.

[June 2, 1902.]

This action was commenced in the State court against the Board of Health of the State of Louisiana and three persons who were members of said board, and whom it was sought to hold individually responsible for damages alleged to have been suffered from the enforcement of a resolution adopted by the board upon the theory that the resolution referred to was *ultra vires* and hence the members of the board who voted for it were personally liable for any damages occasioned by the enforcement of the resolution. The board was thus described in the petition:

"That the defendant The State Board of Health was a body created by Act No. 192 of the general assembly of the State of Louisiana of the year 1898, with power to sue and be sued, domiciled in this city, (the city of New Orleans,) and composed of seven members, whose duty it was, by the provisions of said act, to protect and preserve the public health by preparing and promulgating a sanitary code for the State of Louisiana, by providing for the general sanitation of the State, and with authority to regulate infectious and contagious diseases and to prescribe a maritime and land quarantine against places infected with such diseases."

It was asserted that the plaintiff, a corporation created by and existing under the laws of the Republic of France and a citizen of said republic, on or about September 2, 1898, caused its steamship Britannia to be cleared from the ports of Marseilles, France, and Palermo, Italy, for N w rleans with a cargo of merchandise and with about 408 passengers, some of whom were citizens of the United States returning home, and others who were seeking homes in the United States, and who intended to settle in the State of Louisiana or adjoining States, and that all the passengers referred to at the time of their sailing were free from infectious or contagious diseases. It was further averred that on September 29, 1898, the vessel arrived at the quarantine station some distance below the city of New Orleans, was there regularly inspected, and was found both as to the passengers and cargo to be free from any infectious or contagious disease, and accordingly was given a clean bill of health, whereby the ship became entitled to proceed to New Orleans and land her passengers and discharge her cargo. This, however, it was asserted she was not permitted to do, because, on the date last mentioned, at a meeting held by the Board of Health, the following resolution was adopted:

"*Resolved*, That hereafter in the case of any town, city or parish of Louisiana being declared in quarantine, no body or bodies of people, immigrants, soldiers or others shall be allowed to enter said town, city or parish so long as said quarantine shall exist, and that the president of the board shall enforce this resolution."

It was charged that in order to enforce this resolution the president of the Board of Health, who was one of the individual defendants, instructed the quarantine officer to detain the Britannia at the quarantine station, and the president of the board addressed to the agent of the steamship the following communication explanatory of the detention of the vessel:

"Referring to the detention of the SS. Britannia at the Mississippi River quarantine station, with 408 Italian immigrants on board, I have to inform you that under the provisions of the new State Board of Health law, section 8, of which I enclose a marked copy, this board has adopted a resolution forbidding the landing of any body of people in any town, city or parish in quarantine. Under this resolution the immigrants now on board the Britannia cannot be landed in any of the following parishes of Louisiana, namely: Orleans, St. Bernard, Jefferson (right bank), St. Tammany, Plaquemines, St. Charles or St. John. You will therefore govern yourselves accordingly."

The president of the Board of Health, it was alleged, moreover notified the agent of the ship that if an attempt was made to land the passengers at any place contiguous to New Orleans, such place not being in quarantine, a quarantine against such place would be declared, and thus the landing be prevented.

It was averred that whilst the resolution of the Board of Health purported on its face to be general in its operation, in truth it was passed with the sole object of preventing the landing of the passengers from the Britannia, and this was demonstrated because no attempt was made by the Board of Health to enforce the provisions of the resolution against immigrants from Italy coming into the United States via the port of New York and thence reaching New Orleans by rail, and that after the promulgation of said resolution "more than 200 such persons, varying in groups of 30 to 100 in number, have from time to time been permitted to enter said city." It was averred that the action of the board was not authorized by the State law, and if it was, such law was void because repugnant to the provision of the Constitution of the United States conferring upon Congress power "to regulate commerce with foreign nations, and among the several States and with the Indian tribes." Averring that damage had been already entailed to the extent of $2,500, for which not only the board but its members who voted for the resolution were liable, and reserving the right to claim such future damage as might be entailed by the further enforcement of the resolution, the petition asked for an injunction restraining the enforcement of the resolution in question, and prayed judgment against the board and the members named for $2,500 *in solido*.

The court declined to allow a preliminary restraining order, and upon a hearing on a rule to show cause, the injunction was refused. The order of the Board of Health, which was complained of, continued, therefore, to be enforced against the ship. Subsequently the plaintiff filed a supplemental and amended petition. It was reiterated that the immigrant passengers on board the Britannia were free from disease when they shipped and at the time of their arrival, and, in addition, it was alleged that the steamer with the immigrants on board had sailed from her port of departure "prior to the declaration by said Board of Health of the existence of any infectious disease in the city of New Orleans." It was alleged that, in consequence of the insistence of the Board of Health and its members, in enforcing the illegal order refusing to allow the landing of the immigrant passengers, the steamer had been obliged to proceed to Pensacola, Florida, where they were landed, and then the steamer returned to New Orleans for the purpose of discharging cargo. The damage resulting was averred to be $8,500, besides the $2,500 previously claimed, and a judgment for this amount, in addition to the previous sum, was also asked *in solido* against the board and the members thereof, who were individually made defendants. It was, moreover, averred that the action of the board was "in violation of the laws of the United States, and the rules and regulations made in pursuance thereof, relating to quarantine and immigration from foreign countries into ports of the United States, and especially acts of Congress approved February 15, 1893, and acts of Congress of March the 3d, 1893, August the 3d, 1882, and June the 26th, 1884, and the rules and regulations made in pursuance thereof, and of the treaties now existing between the United States, on the one part, and the Kingdom of Italy and the Republic of France on the other part."

The defendants filed a peremptory exception of no cause of action, which was sustained by the trial court, and the suit was therefore dismissed. On appeal to the Supreme Court of the State of Louisiana the judgment of the trial court was affirmed. (51 La. An. 645.)

Mr. Justice WHITE, after making the foregoing statement, delivered the opinion of the Court.

The law of Louisiana, under which the Board of Health exerted the authority which is complained of, is found in section 8 of Act No. 192, enacted in 1898. The portion of the section which is essential is as follows, the provision which is more directly pertinent to the case in hand being italicized:

"In case that any parish, town or city, or any portion thereof, shall become infected with any contagious or infectious disease, to such an extent as to threaten the spread of such disease to the other portions of the State,

the State Board of Health shall issue its proclamation declaring the facts and ordering it in quarantine, and shall order the local boards of health in other parishes, towns and cities to quarantine against said locality, and shall establish and promulgate the rules and regulations, terms and conditions on which intercourse with said infected locality shall be permitted, and shall issue to the other local sanitary authorities instructions as to the measures adopted in quarantining against persons, goods or other property coming from said infected localities, and these rules and regulations, terms and conditions shall be observed and obeyed by all other health authorities, provided that should any other of the non-infected portion of the State desire to add to the regulations and rules, terms and conditions already imposed by the State Board, they do so on the approval of the State Board of Health. *The State Board of Health may, in its discretion, prohibit the introduction into any infected portion of the State, persons acclimated, unacclimated or said to be immune, when in its judgment the introduction of such persons would add to or increase the prevalence of the disease.* The State Board of Health shall render the local boards of health all the assistance in their power and which the condition of their finances will permit."

The Supreme Court of the State of Louisiana, interpreting this statute, held that it empowered the board to exclude healthy persons from a locality infested with a contagious or infectious disease, and that this power was intended to apply as well to persons seeking to enter the infected place, whether they came from without or from within the State. The court said:

"The law does not limit the board to prohibiting the introduction of persons from one portion of the State to another and an infected portion of the State, but evidently looked as well to the prohibition of the introduction of persons from points outside of the State into any infected portion of the State. As the object in view would be 'to accomplish the subsidence and suppression of the infectious and contagious diseases and to prevent the spread of the same,' it would be difficult to see why parties from outside of the State should be permitted to enter into infected places, while those from the different parishes should be prevented from holding intercourse with each other.

"The object in view was to keep down, as far as possible, the number of persons to be brought within danger of contagion or infection, and by means of this reduction to accomplish the subsidence and suppression of the disease and the spread of the same.

"The particular places from which the parties, who were to be prohibited from entering the infected district or districts, came could have no possible influence upon the attainment of the result sought to be attained.

"It would make no possible difference whether this 'added fuel' sought to be excluded should come from Louisiana, New York or Europe."

Referring to past conditions and the public dangers which had arisen from them, the evil which the statute of 1898 was intended to remedy was pointed out as follows:

"During the fall of 1897, and during the existence of an epidemic, a vessel arrived in the Mississippi River with emigrants aboard under conditions similar to those under which the Britannia reached the same stream in 1898.

"The excited public discussions at the time as to the right of the State board, under the then existing law, to prevent the landing of the emigrants and as to its duty in the premises, were so extended as to authorize us to take judicial notice of the fact, and in our opinion the clause in the present act which covers that precise matter was inserted therein for the express purpose of placing the particular question outside of the range of controversy.

"For a number of years past emigrants have been coming into New Orleans in the autumn from Italy.

"There was a probability when the general assembly met in 1898 that the epidemic of 1897 might be repeated, and a great probability that emigrants would seek to enter, as they had done the year before, to the great danger, not only of the people of Louisiana, but of the emigrants themselves.

"Independently of this, there was great danger to be apprehended from the increasing intercourse between New Orleans and the West India Islands in consequence of a war with Spain.

"It was to ward off these dangers that this particular provision was inserted in the act of 1898."

And by implication from the reasoning just referred to the existence of the conditions rendering it necessary to call the power into play in the case before it was recognized. Thus construing the statute, the State court held that it was not repugnant to the Constitution of the United States and was not in conflict with any law or treaty of the United States. These latter considerations present the questions which arise for our decision. All the assignments of error relied upon to show the invalidity of the statute of the State of Louisiana, and hence the illegality of the action of the Board of Health from the point of view of Federal considerations, are, in the argument at bar, summarized in four propositions. We shall consider them separately and thus dispose of the case. In doing so, however, as the first and second contentions both rest upon the assertion that the statute violates the Constitution of the United States, we shall treat them together.

"First. The statute drawn in question, on its face and as construed and applied, is void for the reason that it is in violation of article I, section 3, paragraph 8, of the Constitution of the United States, inasmuch as it vests authority in the State Board of Health, in its discretion, to interfere with or prohibit interstate and foreign commerce.

"Second. The statute is void for inasmuch as it is in conflict with section 1 of the fourteenth article of amendment to the Constitution of the United States, in that it deprives the plaintiff of its liberty and property without due process of law, and denies to it the equal protection of the law."

That from an early day the power of the States to enact and enforce quarantine laws for the safety and the protection of the health of their inhabitants has been recognized by Congress, is beyond question. That until Congress has exercised its power on the subject, such State quarantine

laws and State laws for the purpose of preventing, eradicating or controlling the spread of contagious or infectious diseases, are not repugnant to the Constitution of the United States, although their operation affects interstate or foreign commerce, is not an open question. The doctrine was elaborately examined and stated in *Morgan Steamship Company* v. *Louisiana Board of Health,* (118 U. S. 455.) That case involved determining whether a quarantine law enacted by the State of Louisiana was repugnant to the commerce clause of the Constitution because of its necessary effect upon interstate and foreign commerce. The court said:

"Is the law under consideration void as a regulation of commerce? Undoubtedly it is in some sense a regulation of commerce. It arrests a vessel on a voyage which may have been a long one. It may affect commerce among the States when the vessel is coming from some other State of the Union than Louisiana, and it may affect commerce with foreign nations when the vessel arrested comes from a foreign port. This interruption of the voyage may be for days or for weeks. It extends to the vessel, the cargo, the officers and seamen, and the passengers. In so far as it provides a rule by which this power is exercised, it cannot be denied that it regulates commerce. We do not think it necessary to enter into the inquiry whether, notwithstanding this, it is to be classed among those police powers which were retained by the States as exclusively their own, and, therefore, not ceded to Congress. For, while it may be a police power in the sense that all provisions for the health, comfort and security of the citizens, are police regulations, and an exercise of the police power, it has been said more than once in this court that, even where such powers are so exercised as to come within the domain of Federal authority as defined by the Constitution, the latter must prevail. (*Gibbons* v. *Ogden,* 9 Wheat. 1, 210; *Henderson* v. *The Mayor,* 92 U. S. 259, 272; *New Orleans Gas Co.* v. *Louisiana Light Co.,* 115 U. S. 650, 661.)

"But it may be conceded that whenever Congress shall undertake to provide for the commercial cities of the United States a general system of quarantine, or shall confide the execution of the details of such a system to a National Board of Health, or to local boards, as may be found expedient, all State laws on the subject will be abrogated, at least so far as the two are inconsistent. But, until this is done, the laws of the State on the subject are valid. This follows from two reasons:

"1. The act of 1799, the main features of which are embodied in Title LVIII of the Revised Statutes, clearly recognizes the quarantine laws of the States, and required of the officers of the Treasury a conformity to their provisions in dealing with vessels affected by the quarantine system. And this very clearly has relation to laws created after the passage of that statute, as well as to those then in existence; and when, by the act of April 29, 1878, (20 Stat. 37,) certain powers in this direction were conferred on the Surgeon General of the Marine Hospital Service, and consuls and revenue officers were required to contribute services in preventing the importation of disease, it was provided that 'there shall be no interference in any manner with any quarantine laws or regulations as they now exist or may hereafter be adopted under State laws,' showing very clearly the intention of Congress to adopt these laws or to recognize the power of the States to pass them.

"2. But, aside from this, quarantine laws belong to that class of State legislation which, whether passed with intent to regulate commerce or not, must be admitted to have that effect, and which are valid until displaced or contravened by some legislation of Congress."

Again, in *Louisiana* v. *Texas*, (176 U. S. 1, 21,) the court was called upon to consider a quarantine law of the State of Texas which by its terms was applicable to and was enforced as to both interstate and foreign commerce. After referring approvingly to the case which we have above cited, the court, speaking through Mr. Chief Justice Fuller, said:

"It is not charged that this statute is invalid nor could it be if tested by its terms. While it is true that the power vested in Congress to regulate commerce among the States is a power complete in itself, acknowledging no limitations other than those prescribed in the Constitution, and that where the action of the States in the exercise of their reserve powers comes into collision with it, the latter must give way, yet it is also true that quarantine laws belong to that class of State legislation which is valid until displaced by Congress, and that such legislation has been expressly recognized by the laws of the United States almost from the beginning of the government."

Further, in calling attention to the fact, as remarked by the court in *Morgan Steamship Company* v. *Louisiana Board of Health*, *supra*, that in the nature of things quarantine laws and laws relating to public health must necessarily vary with the different localities of the country, it was said:

"Hence even if Congress had remained silent on the subject it would not have followed that the exercise of the police power of the State in this regard, although necessarily operating on interstate commerce, would be therefore invalid. Although from the natnre and subjects of the power of regulating commerce it must be ordinarily exercised by the national government exclusively, this has not been held to be so where in relation to the particular subject-matter different rules might be suitable in different localities. At the same time, Congress could by affimative action displace the local laws, substitute laws of its own, and thus correct any unjustifiable and oppressive exercise of power by State legislation."

Despite these conclusive adjudications, it is earnestly insisted in the argument at bar that by a correct appreciation of all the decisions of this court on the subject, the rule will be discovered to be that the States may enact quarantine or other health laws for the protection of their inhabitants, but that such laws, if they operate upon or directly affect interstate or foreign commerce, are repugnant to the Constitution of the United States independently of whether Congress has legislated on such subjects. To sustain this contention a most copious reference is made to many cases decided by this court, where the nature and extent of the power of Congress to regulate commerce was considered and the validity of State legislation asserted to be repugnant to such power was passed upon. To analyze and review the numerous cases referred to in order to point out their want of relation

to the question in hand, would involve in effect a review of the whole subject of the power of Congress to regulate commerce in every possible aspect, and an analysis of practically the greater body of cases which have in this court involved that serious and difficult subject from the beginning. We shall not undertake to do so, but content ourselves with saying, after duly considering the cases relied upon, that we find them inapposite to the doctrine they are cited to sustain, and hence, when they are correctly appreciated, none of them conflict with the settled rule announced by this court in the cases to which we have referred.

The confusion of thought which has given rise to the misconception of the authorities relied upon in the argument, and which has caused it to be supposed that they are apposite to the case in hand, is well illustrated by the premise upon which the proposition that the cited authorities are applicable rests. That proposition is thus stated in the printed argument (italics in the original):

"Turning now to the decisions of this court, it will be found that the basis upon which it has upheld the exclusion, inspection and quarantine laws of various States, is that criminals, diseased persons and things, and paupers, *are not legitimate subjects of commerce.* They may be attendant evils, but they are not legitimate subjects of traffic and transportation, and therefore, in their exclusion or detention, the State is not interfering with *legitimate* commerce, which is the only kind entitled to the protection of the Constitution."

But it must be at once observed that this erroneously states the doctrine as concluded by the decisions of this court previously referred to, since the proposition ignores the fact that those cases expressly and unequivocally hold that the health and quarantine laws of the several States are not repugnant to the Constitution of the United States, although they affect foreign and domestic commerce, as in many cases they necessarily must do in order to be efficacious, because until Congress has acted under the authority conferred upon it by the Constitution, such State health and quarantine laws producing such effect on legitimate interstate commerce are not in conflict with the Constitution. True it is that, in some of the cases relied on in the argument, it was held that a State law absolutely prohibiting the introduction, under all circumstances, of objects actually affected with disease, was valid because such objects were not legitimate commerce. But this implies no limitation on the power to regulate by health laws the subjects of legitimate commerce. In other words, the power exists until Congress has acted, to incidentally regulate by health and quarantine laws, even although interstate and foreign commerce is affected, and the power to absolutely prohibit additionally obtains where the thing prohibited is not commerce, and hence not embraced in either interstate or foreign commerce. True, also, it was held in some of the cases referred to by counsel, that where the introduction of a given article was absolutely prohibited by

a State law upon the asserted theory that the health of the inhabitants would be aided by the enforcement of the prohibition, it was decided that, as the article which it was thus sought to prohibit, was a well-known article of commerce, and therefore the legitimate subject of interstate commerce, it could not be removed from that category by the prohibitive effect of State legislation. But this case does not involve that question, since it does not present the attempted exercise by the State of the power to absolutely prohibit the introduction of an article of commerce, but merely requires us to decide whether a State law, which regulates the introduction of persons and property into a district infested with contagious or infectious diseases, is void, because to enforce such regulation will burden interstate and foreign commerce, and therefore violate the Constitution of the United States. It is earnestly insisted that the statute, whose constitutionality is assailed, is, on its face, not a regulation, but an absolute prohibition against interstate commerce, and it is sought to sustain this contention by various suggestions as to the wrong which may possibly arise from a perversion and an abuse by the State authorities of the power which the statute confers. Thus it is said, what is an infectious and contagious disease is uncertain, and involves a large number of maladies. How many cases of such malady are essential to cause a place to be considered as infected with them is left to the determination of the Board of Health. That board, it is argued, may then arbitrarily, upon the existence of one or more cases of any malady which it may deem to be infectious or contagious, declare any given place in the State, or even the whole State of Louisiana, infected, and proceed to absolutely debar all interstate or foreign commerce with the State of Louisiana. True it is, as said in *Morgan* v. *Louisiana*, *ubi sup.*:

"In all cases of this kind it has been repeatedly held that, when the question is raised whether the State statute is a just exercise of State power or is intended by roundabout means to invade the domain of Federal authority, this court will look into the operation and effect of the statute to discern its purpose. See *Henderson* v. *Mayor of New York*, (92 U. S. 259;) *Chy Lung* v. *Freeman*, (92 U. S. 275;) *Cannon* v. *New Orleans*, (20 Wall. 587.)"

But this implies that we are to consider the statute as enacted and the natural results flowing from it. It does not import that we are to hold a State statute unconstitutional by indulging in conjecture as to every conceivable harm which may arise or wrong which may be occasioned by the abuse of the lawful powers which a statute confers. It will be time enough to consider a case of such supposed abuse when it is presented for consideration. And it is also to be borne in mind, as said by this court in *Louisiana* v. *Texas*, *supra*, (22), if any such wrong should be perpetrated "Congress could by affirmative action displace the local laws, substitute laws of its own, and thus correct any unjustifiable and oppressive exercise of power by State legislation." And the views which we have previously expressed

suffice to dispose of the contention that the subjecting of the vessel of the plaintiff in error to the restriction imposed by the quarantine and health law of the State operated to deprive the defendant in error of its property without due process of law, in violation of the Fourteenth Amendment. It having been ascertained that the regulation was lawfully adopted and enforced the contention demonstrates its own unsoundness, since in the last analysis it reduces itself to the proposition that the effect of the Fourteenth Amendment was to strip the government, whether State or national, of all power to enact regulations protecting the health and safety of the people, or, what is equivalent thereto, necessarily amounts to saying that such laws when lawfully enacted cannot be enforced against person or property without violating the Constitution. In other words, that the lawful powers of government which the Constitution has conferred may not be exerted without bringing about a violation of the Constitution.

"Third. The statute as applied and construed is void, for the reason that it is in conflict with treaties between the United States on the one part and the Republic of France and the Kingdom of Italy on the other part, guaranteeing certain rights, privileges and immunities to the citizens and subjects of said countries."

Reliance is placed to sustain this proposition, on the provisions of a treaty concluded with the Kingdom of Italy on February 26, 1871; on the terms of a treaty with Great Britain of July 3, 1815, as also a treaty between the United States and the Kingdom of Greece, concluded December 22, 1837, and one concluded with the Kingdom of Sweden and Norway on July 24, 1827. The treaties of other countries than Italy are referred to upon the theory that as by the treaty concluded with France on April 3, 1803, by which Louisiana was acquired, it was provided that France should be treated upon the footing of the most favored nation in the ports of the ceded territory, therefore the treaties in question made with other countries than France were applicable to the plaintiff in error, a French subject.

Conceding, *arguendo*, this latter proposition, and therefore assuming that all the treaties relied on are applicable, we think it clearly results from their context that they were not intended to and did not deprive the government of the United States of those powers necessarily inhering in it and essential to the health and safety of its people. We say the United States, because if the treaties relied on have the effect claimed for them that effect would be equally as operative and conclusive against a quarantine established by the government of the United States as it would be against a State quarantine operating upon and affecting foreign commerce by virtue of the inaction of Congress. Without reviewing the text of all the treaties, we advert to the provisions of the one made with Greece, which is principally relied upon. The text of article XV of this

treaty is the provision to which our attention is directed, and it is reproduced it the margin.*

It is apparent that it provides only the particular form of document which shall be taken by a ship of the Kingdom of Greece and reciprocally by those of the United States for the purpose of establishing that infectious or contagious diseases did not exist at the point of departure. But it is plain from the face of the treaty that the provision as to the certificate was not intended to abrogate the quarantine power, since the concluding section of the article in question expressly subjects the vessel holding the certificate to quarantine detention if, on its arrival, a general quarantine had been established against all ships coming from the port whence the vessel holding the certificate had sailed. In other words, the treaty having provided the certificate and given it effect under ordinary conditions, proceeds to subject the vessel holding the certificate to quarantine, if, on its arrival, such restriction had been established in consequence of infection deemed to exist at the port of departure. Nothing in the text of the treaty, we think, gives even color to the suggestion that it was intended to deal with the exercise by the government of the United States of its power to legislate for the safety and health of its people or to render the exertion of such power nugatory by exempting the vessels of the Kingdom of Greece, when coming to the United States, from the operation of such laws. In other words, the treaty was made subject to the enactment of such health laws as the local conditions might evoke not paramount to them. Especially where the restriction imposed upon the vessel is based, not upon the conditions existing at the port of departure, but upon the presence of an infectious or contagious malady at the port of arrival within the United States, which, in the nature of things, could not

* "Article XV. It is agreed that vessels arriving directly from the United States of America at a port within the dominion of His Majesty the King of Greece, or from the Kingdom of Greece, at a port of the United States of America, and provided with a bill of health granted by an officer having competent power to that effect at the port whence such vessel shall have sailed, setting forth that no malignant or contagious diseases prevailed in that port, shall be subjected to no other quarantine than such as may be necessary for the visit of the health officer of the port where such vessel shall have arrived, after which said vessels shall be allowed immediately to enter and unload their cargoes; Provided always, that there shall be on board no person who, during the voyage, shall have been attacked with any malignant or contagious disease; that such vessel shall not, during the passage, have communicated with any vessel liable itself to undergo quarantine; and that the country whence they came shall not at that time be so far infected or suspected that, before their arrival, an ordinance had been issued in consequence of which all vessels coming from that country should be considered as suspected, and consequently subject to quarantine."

be covered by the certificate relating to the state of the public health at the port whence the ship had sailed.

"Fourth. The statute as applied is void for the reason that it is in conflict with the laws of the United States relating to foreign immigration into the United States."

In the argument at bar this proposition embraces also the claim that the statute is void because in conflict with the act of Congress of 1893 entitled "An act granting additional quarantine powers and imposing additional duties upon the Marine Hospital Service." (27 Stat. 449.) And that it also is in conflict with the rules and regulations adopted for the enforcement of both the immigration laws and the quarantine law referred to.

The immigration acts to which the proposition relates are those of March 3, 1875, of August 3, 1882, of June 26, 1884, of February 26, 1885, of March 23, 1887, and March 3, 1891, and the regulations to enforce the same. Without undertaking to analyze the provisions of these acts, it suffices to say that, after scrutinizing them, we think they do not purport to abrogate the quarantine laws of the several States, and that the safeguards which they create and the regulations which they impose on the introduction of immigrants are ancillary, and subject to such quarantine laws. So far as the act of 1893 is concerned, it is manifest that it did not contemplate the overthrow of the existing State quarantine systems and the abrogation of the powers on the subject of health and quarantine exercised by the States from the beginning, because the enactment of State laws on these subjects would, in particular instances, affect interstate and foreign commerce. An extract from section 3 of the act, which we think makes these conclusions obvious, is reproduced in the margin.*

Nor do we find anything in the rules and regulations adopted by the Secretary of the Treasury in execution of the power conferred upon him by the act in question giving support to the contention based upon them. It follows from what has been said that the Supreme Court of Louisiana

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*"SEC. 3. That the Supervising Surgeon General of the Marine Hospital Service shall, immediately after this act takes effect, examine the quarantine regulations of all State and municipal boards of health, and shall, under the direction of the Secretary of the Treasury, co-operate with and aid State and municipal boards of health in the execution and enforcement of the rules and regulations of such boards and in the execution and enforcement of the rules and regulations made by the Secretary of the Treasury, to prevent the introduction of contagious or infectious diseases into the United States from foreign countries, and into one State or Territory or the District of Columbia from another State or Territory or the District of Columbia; and all rules and regulations made by the Secretary of the Treasury shall operate uniformly and in no manner discriminate against any port or place; and at such ports and places within the United States as have no quarantine regu-

did not err in deciding that the act in question was not repugnant to the Constitution of the United States, and was not in conflict with the acts of Congress or the treaties made by the United States which were relied upon to show to the contrary and its judgment is, therefore,

Affirmed.

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lations under State or municipal authority, where such regulations are, in the opinion of the Secretary of the Treasnry, necessary to prevent the introduction of contagious or infectious diseases into the United States from foreign countries, or into one State or Territory or the District of Columbia from another State or Territory or the District of Columbia, and at such ports and places within the United States where quarantine regulations exist under the authority of the State or municipality which, in the opinion of the Secretary of the Treasury, are not sufficient to prevent the introduction of such diseases into the United States, or into one State or Territory or the District of Columbia from another State or Territory or the District of Columbia, the Secretary of the Treasury shall, if in his judgment it is necessary and proper, make such additional rules and regulations as are necessary to prevent the introduction of such diseases into the United States from foreign countries, or into one State or Territory or the District of Columbia from another State or Territory or the District of Columbia, and when said rules and regulations have been made they shall be promulgated by the Secretary of the Treasury and enforced by the sanitary authorities of the States and municipalities, where the State or municipal health authorities will undertake to execute and enforce them; but if the State or municipal authorities shall fail or refuse to enforce said rules and regulations the President shall execute and enforce the same and adopt such measures as in his judgment shall be necessary to prevent the introduction or spread of such diseases, and may detail or appoint officers for that purpose. The Secretary of the Treasury shall make such rules and regulations as are necessary to be observed by vessels at the port of departure and on the voyage, where such vessels sail from any foreign port or place to any port or place in the United States, to secure the best sanitary condition of such vessel, her cargo, passengers and crew, which shall be published and communicated to and enforced by the consular officers of the United States."

True copy.

Test:

Clerk Supreme Court, U. S.

Supreme Court of the United States.

No. 4.—October Term, 1901.

The Compagnie Française de Navigation a Vapeur, Plaintiff in Error, vs. The State Board of Health of Louisiana et al. } In error to the Supreme Court of the State of Louisiana.

[June 2, 1902.]

Mr. Justice Brown, with whom was Mr. Justice Harlan, dissenting.

The power of the several States, in the absence of legislation by Congress on the subject, to establish quarantine regulations, to prohibit the introduction into the State of persons infected with disease, or recently exposed to contagion, and to impose a reasonable charge upon vessels subjected to examination at quarantine stations, is so well settled by repeated decisions of this court as to be no longer open to doubt. This case, however, does not involve that question, but the broader one, whether, in the assumed exercise of this power, the legislature may declare certain portions of the State to be in quarantine, and prohibit the entry therein of *all* persons whatsoever, whether coming from the United States or foreign countries, from infected or uninfected ports, whether the persons included are diseased or have recently been exposed to contagion, or are perfectly sound and healthy, and coming from ports in which there is no suspicion of contagious diseases.

I have no doubt of the power to quarantine all vessels arriving in the Mississippi from foreign ports for a sufficient length of time to enable the health officers to determine whether there are among her passengers any persons afflicted with a contagious disease. But the State of Louisiana undertakes to do far more than this. It authorizes the State Board of Health at its discretion to "prohibit the introduction into any infected portion of the State of persons acclimated, unacclimated or said to be immune, when in its judgment the introduction of said persons would add to or increase the prevalence of the disease;" and at its meeting on September 29, 1898, the Board of Health adopted the following resolution:

"That hereafter, in the case of any town, city or parish of Louisiana being declared in quarantine, no body or bodies of people, immigrants, soldiers or others shall be allowed to enter said town, city or parish so long as said quarantine shall exist, and that the President of the Board shall enforce this resolution."

In other words, the Board of Health is authorized and assumes to prohibit in all portions of the State which it chooses to declare in quarantine, the introduction or immigration of all persons from outside the quarantine district, whether infected or uninfected, sick or well, sound or unsound, feeble or healthy; and that, too, not for the few days necessary to establish the sanitary *status* of such persons, but for an indefinite and possibly permanent period. I think this is not a necessary or proper exercise of the police power, and falls within that numerous class of cases which hold that States may not, in the assumed exercise of police power, interfere with foreign or interstate commerce.

The only excuse offered for such a wholesale exclusion of immigrants is, as stated by the Supreme Court, "to keep down, as far as possible, the number of persons to be brought within danger of contagion or infection, and by means of this reduction to accomplish the subsidence and suppression of the disease, and the spread of the same." In other words, the excuse amounts to this: that the admission, even of healthy persons, adds to the possibility of the contagion being communicated upon the principle of adding fuel to the flame. It does not increase the danger of contagion by adding infected persons to the population, since the bill avers that all the immigrants were healthy and sound. All it could possibly do is to increase the number of persons who might become ill if permitted to be added to the population. This is a danger not to the population, but to the immigrants. It seems to me that this is a possibility too remote to justify the drastic measure of a total exclusion of all classes of immigrants, and that the opinion of the court is directly in the teeth of *Railroad Company* v. *Husen*, (95 U. S. 465,) wherein a State statute, which prohibited the driving or conveying of any Texas, Mexican or Indian cattle into the State, between March 1 and November 1 in each year, was held to be in conflict with the commerce clause of the Constitution. Such statute was declared to be more than a quarantine regulation, and not a legitimate exercise of the police power of the State. Said Mr. Justice Strong, page 472: "While we unhesitatingly admit that a State may pass sanitary laws, and laws for the protection of life, liberty, health or property within its borders; while it may prevent persons and animals suffering under contagious or infectious diseases, or convicts, &c., from entering the State; while for the purpose of self-protection it may establish quarantine and reasonable inspection laws, it may not interfere with the transportation into or through the State, beyond what is absolutely necessary for its self-protection. It may not under the cover of exerting its police powers substantially prohibit or burden either foreign or interstate commerce." The statute was held to be a plain intrusion upon the exclusive domain of Congress; that it was not a quarantine law; not an inspection law, and was objectionable because it prohibited the introduction of cattle, no matter

whether they may do an injury to the inhabitants of a State or not; "and if you do bring them in, even for the purpose of carrying them through the State without unloading them, you shall be subject to extraordinary liabilities." Cases covering the same principle are those of *State* v. *Steamship Constitution*, (42 Cal. 578,) and *City of Bangor* v. *Smith*, (83 Maine, 422.)

I am also unable to concur in the construction given in the opinion of the court to the treaty stipulation with France and other foreign powers. The treaty with France of 1803 provides that "the ships of France shall be treated upon the footing of the most favored nation in the ports above mentioned" of Louisiana. Article 14 of the treaty with Greece of December 22, 1837, set forth in the opinion, provides that vessels arriving directly from the kingdom of Greece at any port of the United States of America, "and provided with a bill of health granted by an officer having competent power to that effect at the port whence such vessel shall have sailed, setting forth that no malignant or contagious diseases prevailed in that port, shall be subjected to no other quarantine than such as may be necessary for the visit of the health officer of the port where such vessel shall have arrived, after which said vessels shall be allowed immediately to enter and unload their cargoes: *Provided always*, That there shall be on board no person who, during the voyage, shall have been attacked with any malignant or contagious disease; that such vessel shall not, during the passage, have communicated with any vessel liable itself to undergo quarantine; and that the country whence they came shall not at that time be so far infected or suspected that, before their arrival, an ordinance had been issued in consequence of which all vessels coming from that country should be considered as suspected, and consequently subject to quarantine."

If the law in question in Louisiana, excluding French ships from all access to the port of New Orleans, be not a violation of the provision of the treaty that vessels "shall be subject to no other quarantine than such as may be necessary for the visit of a health officer of the port, after which such vessels shall be allowed immediately to enter and unload their cargoes," I am unable to conceive a state of facts which would constitute a violation of that provision. Necessary as efficient quarantine laws are, I know of no authority in the States to enact such as are in conflict with our treaties with foreign nations.

True copy.

Test:

Clerk Supreme Court, U. S.